



# AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING  
Meeting Date: September 4, 2018

Agenda Item 9-C  
Approvals:  
City Manager [Signature]  
Dept. Head [Signature]  
Attorney [Signature]  
Finance [Signature]

**Department:** Community Development  
**Prepared By:** City Attorney

**Subject:** AN ORDINANCE AMENDING THE SAN CLEMENTE MUNICIPAL CODE TO REMOVE LANGUAGE RELATING TO STATUS CRIMES AND TO CONSOLIDATE PROVISIONS REGARDING PENALTIES AND ADMINISTRATIVE FINES.

**Fiscal Impact:** None.

**Summary:** Staff recommends the City Council consider an ordinance amending the Municipal Code to remove prohibitions on loitering and similar "status" crimes, specifically in Titles 9, 12, and 17, and to centralize the penalty sections within Title 1, and remove penalty references throughout the Municipal Code including Titles 1, 3, 5, 6, 8, 9, 10, 12, 13, 15, and 17.

**Background:** The City, by virtue of the police powers delegated to it by the California Constitution, is authorized to adopt policies to promote the health, safety, and general welfare of its residents. This authority includes the regulation of certain disorderly conduct within the City, as well as establishing penalties for violations of the Municipal Code. However, such regulation may not be unconstitutionally vague or overbroad and may not unconstitutionally limit freedom of expression or target a discrete class.

**Discussion:** **LOITERING.** Five sections of the San Clemente Municipal Code address "loitering" or similar "status" crimes, such as "idling" or "wandering:"

- 9.04.010. Disorderly Conduct.
- 9.24.040. Exceptions (for Trespass).
- 12.28.020. Municipal Golf Course – Prohibited Acts.
- 17.28.050. Amusement Centers.
- 17.56.100. Emergency Shelter Overlay District.

Use of such terms may present challenges to enforcement. Courts have held that prohibitions on "loitering," "idling," or "wandering" can be unconstitutionally vague and overbroad, because the prohibitions do not provide clear notice as to how "loitering" differs from a person's simple and lawful presence in a public place. (*Nunez v. City of San Diego* (9th Cir. 1997) 114 F.3d 935, 943.)

The deletion of these provisions leaves intact sufficient enforcement authority in other sections of the Code prohibiting specific acts of disorderly conduct without the vagueness vulnerabilities. Even without these terms, the Municipal Code still

provides adequate protection by barring obstruction of free passage on sidewalks, aggressive solicitation, trespass, and other similar prohibited conduct. For example:

- **Obstruction of Movement.** "No person shall do any of the following... Sit, lie, recline, kneel or otherwise unreasonably restrict or obstruct the free use of any public sidewalk, walkway, passageway, or any public place, or for any number of persons to congregate in such a manner as to willfully and unnecessarily obstruct or interfere with the free movement and passage of persons or vehicles in any public street or any other public place within the City." (SCMC, § 9.04.010(B)(8).)
- **Trespass.** "No person shall remain upon any private property not open to the public or upon business premises, after being requested to leave by the owner, owner's agent, lessee, person in lawful possession, or by a peace officer acting at the request of the owner, owner's agent, lessee or person in lawful possession, and upon being informed by the peace officer that he or she is acting at the request of the owner, owner's agent, lessee or person in lawful possession." (SCMC, § 9.24.030(A).)
- **Aggressive Solicitation.** No person shall solicit in an aggressive manner in any public place. A person solicits in an aggressive manner by engaging in any of the following before, during, or after solicitation: (a) Approaching, speaking to, or following a person, if that conduct is intended or is likely to cause a reasonable person to (i) Fear bodily harm to oneself or to another person, damage to or loss of property; or (ii) Otherwise be intimidated into giving money or other thing of value; (b) Intentionally touching or causing physical contact with another person or an occupied vehicle without that person's consent; or (c) Intentionally blocking or interfering with the safe or free passage of a pedestrian or vehicle by any means, including unreasonably causing a pedestrian or vehicle operator to take evasive action to avoid physical contact. (SCMC, § 9.04.095(B).)

As noted above, two of the five sections for amendment are in title 17, Zoning. Although section 17.16.040 generally requires that amendments to title 17 be reviewed by the Planning Commission prior to consideration by the City Council, the amendments to title 17 at issue in the amendment do not concern the City's land use, planning, or future development, but instead concern overriding constitutional and state law compliance. As a result, these amendments do not require review by the Planning Commission prior to consideration by the City Council.

**PENALTIES.** Currently penalties for violations of the Municipal Code are found in Title 1 as well as throughout the Municipal Code. Specifically the following sections reference penalties:

- 1.16.010. General penalty—Misdemeanors, infractions—Continuing violations
- 1.16.030. Nuisances—Attorney's fees and costs
- 1.20.080. Administrative hearing
- 5.12.100. Violation – Penalty

- 5.20.080. Summary suspension of license pending opportunity for hearing—Continuation after suspension—Revocation generally
- 5.32.390. Penalties
- 5.40.120. Penalty
- 5.52.060. Suspension and revocation of street vending permit
- 5.52.080. Penalties
- 6.08.020. Dogs on public property—Animals in proximity to residences
- 6.10.110. Collection of unpaid fines
- 6.32.090. Fines
- 6.36.090. Protection of canines utilized by Police Department
- 8.12.090. Prohibited acts
- 8.24.130. Penalty
- 8.28.040. Containers—Placement for Collection—Restrictions on Storage; Penalty for Violations
- 8.28.130. Violations as Infraction
- 8.54.050. Compliance
- 8.56.360. Penalties
- 8.66.080. Penalties for violation – Enforcement
- 8.69.080. Return of C&D Performance Security Deposit
- 8.69.110. Violations
- 9.04.010. Disorderly Conduct
- 9.04.080. Urination and Defecation in Public Places
- 9.12.070. Penalty
- 9.24.040. Exceptions
- 9.24.080. Violations and Penalties
- 10.52.180. Violation—Abandonment
- 10.52.190. Violation—Failure to remove—Attorney's fees and costs.
- 10.64.040. Violation as infraction
- 13.12.090. Nuisances, abatement, injunctive relief
- 13.30.080. Enforcement
- 13.36.120. Penalty for violation of chapter
- 13.40.090. Criminal sanctions
- 15.76.080. Compliance
- 17.04.060. Zoning Ordinance violations
- 17.16.170. Demolition of Historic Properties
- 17.28.035. Marijuana Uses
- 17.56.100. Emergency Shelter Overlay District
- 17.64.070. Disabled Accessible Parking Spaces
- 17.76.040. Development standards
- 17.88.040. Severability

Listing penalties throughout these Municipal Code sections as well as the general penalty provision of Title 1 can create confusion during citation and prosecution. It also removes prosecutorial discretion to adjust penalties based on such factors as the gravity of the violation and the offender's commitment to restitution and compliance. In order to address this, the changes to Title 1 include making all violations of the Municipal Code misdemeanors that may be reduced to an

infraction at the discretion of the prosecuting attorney. Throughout the above-referenced provisions of the Municipal Code, references to specific penalties are removed, and Title 1 will control the penalties for violation of the Municipal Code.

**ATTORNEY'S FEES.** Finally, this ordinance clarifies the circumstances under which attorney's fees may be awarded to a prevailing party in an enforcement action. At the outset of an enforcement matter, state law gives the City the discretion to seek recovery of its attorney's fees. If the City seeks its fees, fees then are also recoverable against the City if the defendant prevails in the matter. This ordinance clarifies that these procedures apply only in civil and administrative matters. It also limits a defendant's recovery to the amount the City reasonably spent on its side of the case.

**Environmental  
Review:**

This action would not, in itself, in any way impact or alter the physical environment. Accordingly, this action is exempt from environmental review under State CEQA Guidelines sections 15061(b)(3) (the general-rule exemption) and 15262 (exemption for feasibility and planning studies).

**Recommended  
Action:**

STAFF RECOMMENDS THAT the City Council introduce Ordinance No. \_\_\_\_\_, entitled "An Ordinance of the City Council of the City of San Clemente, California Amending the San Clemente Municipal Code to Remove Language Relating to Status Crimes and to Consolidate Provisions Regarding Penalties and Administrative Fines."

**Attachments:** 1. Draft Ordinance No. \_\_\_\_\_.

**Notification:** Not applicable.

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA AMENDING THE SAN CLEMENTE MUNICIPAL CODE TO REMOVE LANGUAGE RELATING TO STATUS CRIMES AND TO CONSOLIDATE PROVISIONS REGARDING PENALTIES AND ADMINISTRATIVE FINES**

**WHEREAS**, the City, by virtue of the police powers delegated to it by the California Constitution, is authorized to adopt policies to promote the health, safety, and general welfare of its residents;

**WHEREAS**, State and constitutional law set certain parameters on a city's ability to regulate loitering and similar acts;

**WHEREAS**, the City Council desires to amend the sections 9.04.010, Disorderly Conduct, 9.24.040, Exceptions (for Trespass) 12.28.020, Municipal Golf Course—Prohibited Acts, 17.28.050, Amusement Centers, and 17.56.100, Emergency Shelter Overlay District, to further ensure compliance with state law and the protection of public health, safety, and general welfare of its residents; and

**WHEREAS**, the City Council desires to amend and repeal sections throughout the Municipal Code to centralize the penalties for violation of the Municipal Code in Chapter 1.16, General Penalty and chapter 1.20 Administrative Fines.

**NOW, THEREFORE**, the City Council of the City of San Clemente does ordain as follows:

**Section 1. Recitals.** The recitals above are each incorporated by reference and adopted as findings by the City Council.

**Section 2. Title 1, Chapter 1.16 Code Amendment.** San Clemente Municipal Code, title 1, General Provisions, chapter 1.16, General Penalty, section 1.16.010, General penalty—Misdemeanors, infractions—Continuing violations—Booking fees, is hereby amended to read as follows (additions shown in underline, deletions shown in ~~strikeout~~):

**1.16.010 - General penalty—Misdemeanors, infractions—Continuing violations—Enforcement by any means authorized by law—Booking fees.**

**A. No person, corporation or other entity, whether as principal, agent, employee or otherwise, shall violate, cause the violation of, maintain a violation, or otherwise fail to comply with any of the requirements of this code or adopted codes. Any violation of any provision of this code and adopted codes constitute a misdemeanor unless specifically designated as an infraction by this code or prosecuted as an infraction in the discretion of the City Attorney, City Prosecutor, or District Attorney in the interest of justice.**

- ~~AB.~~ Except as otherwise provided by law, whenever in this code or in any other ordinance of the City or in any order, rule, or regulation issued or promulgated pursuant thereto, any act is prohibited or is made or declared to be unlawful or an offense or a misdemeanor, or the doing of any act is required or the failure to do so is declared to be unlawful or an offense or a misdemeanor, where no specific penalty is provided therefor, the violation of any such provision of this code or any other ordinance of the City or any such order, rule or regulation shall be deemed a misdemeanor, and punished. Any conviction of a misdemeanor under the provisions of this code shall, unless otherwise specified, be punishable by a fine not exceeding one thousand dollars (\$1,000.00), or imprisonment in the county jail for a term not exceeding six (6) months, or by both such fine and imprisonment
- C. Any conviction of an infraction under the provisions of this code shall, unless otherwise specified, be punishable by a fine not exceeding one hundred dollars (\$100.00) for the first offense, a fine not exceeding two hundred dollars (\$200.00) for the second offense of the same provision within one (1) year, and a fine not exceeding five hundred (\$500.00) for each additional offense of the same provision within one (1) year.
- D. Every day any violation of this code or any other ordinance of the City or any such order, rule or regulation shall ~~continues~~ constitute a separate and distinct offense for which the full penalty therefore may be imposed.
- E. Any violation of this code, codes adopted by the City, or provisions of state or federal law that may be enforced by the City, or any rules, regulations, permits, conditions of approval, or approvals issued by or applicable to the City may be enforced by any means authorized by law, including but not limited to, criminal prosecution, civil action for restraining order and injunctive relief, receivership, administrative or abatement proceeding. The remedies provided in this code are intended to be cumulative and not exclusive, and may be pursued individually, consecutively, or in conjunction with each other.
- ~~DE.~~ Officers and employees of the City who have the discretionary power to enforce an ordinance, order, rule or regulation may, pursuant to Section 1.12.010 of this title, and subject to the provisions thereof, arrest a person without a warrant whenever any such officer or employee has reasonable cause to believe that the person to be arrested has committed a misdemeanor in the officer's or employee's presence which he or she has the discretionary duty to enforce, and to issue a notice to appear and to release such person upon his or her written promise to appear in court. No officer or employee shall be allowed by his or her superior to exercise the arrest and citation authority herein conferred unless such officer or employee is within a classification of City officers and employees designated by ordinance of the City to exercise such arrest and citation authority.

EG. Payment of Fees. Any person convicted of any criminal offense related to an arrest shall pay to the City any criminal justice administration fee imposed on the City by the County of Orange.

**Section 3. Title 1, Chapter 1.16 Code Amendment.** San Clemente Municipal Code, title 1, General Provisions, chapter 1.16, General Penalty, section 1.16.030, Nuisances—Attorney's fees and costs, is hereby amended to read as follows (additions shown in underline, deletions shown in ~~strikeout~~):

**1.16.030 - Nuisances—Attorney's fees and costs.**

- A. ~~Any activity, object, establishment, property, or facility operated, conducted, or maintained contrary to the provisions~~Any violation of the San Clemente Municipal Code, adopted codes, or state or federal law or regulation enforceable by the City shall be, and the same is hereby declared to be, is unlawful and a public nuisance. The City Attorney may, in addition to or in lieu of prosecuting a criminal action hereunder, commence an action or actions, proceeding or proceedings, for the abatement, removal, and enjoinder of such violations in the manner provided by law, and shall take such other steps and shall apply to such court or courts as may have jurisdiction to grant such relief as will abate or remove such violations and restrain and enjoin any person from conducting activities contrary to the provisions of this chapter. ~~If the City elects at the initiation of a public nuisance action to seek the recovery of attorney's fees, the prevailing party in any such action shall be entitled to recover all of its reasonable costs and expenses incurred with respect to said action, including without limitation its costs of investigation and discovery, attorney's fees, and expert witness fees.~~
- B. The prevailing party in any civil or administrative action, proceeding or special proceeding to abate a nuisance may recover its reasonable attorney's fees, provided that the City elected, at the initiation of such individual action or proceeding, to recover its own attorney's fees. In no action or proceeding shall an award of attorney's fees to a prevailing party exceed the amount of reasonable attorney's fees incurred by the City in the action or proceeding. A civil or administrative action or proceeding includes, but is not limited to, any civil action, inspection or abatement warrant proceeding, administrative proceeding, or appeal from an administrative proceeding. The city shall be deemed the prevailing party in the action or proceeding if a violation is shown to have existed at the time the action or proceeding is initiated by the city, even if the violation is abated prior to the conclusion of the proceeding or hearing. Any recovery of attorney's fees for abatement of a nuisance shall be in accordance with this section.

- C. In addition to recovery of any other costs as provided by this code, in any action to abate a nuisance, the City shall be entitled to recover from the property on which the nuisance exists and against the property owner and any other violators jointly and severally, all actual, staff and administrative costs, including but not limited to those incurred in investigations, inspections, abatement, enforcement and providing any notice required by this code or state or federal law.

**Section 4, Title 1, Chapter 1.20 Code Amendment.** San Clemente Municipal Code, title 1, General Provisions, chapter 1.20 Administrative Fines, section 1.20.080, Administrative hearing, is hereby amended to read as follows (additions shown in underline, deletions shown in ~~strikeout~~):

**1.20.080 - Administrative hearing.**

- A. Purpose. .... It is the purpose and intent of the City Council to afford due process of law to any person who is issued an administrative citation. Due process of law includes adequate notice, an opportunity to participate in a hearing, and an adequate explanation of the reasons justifying the administrative fine.
- B. Request for Hearing. .... Any person desiring to challenge the issuance of an administrative citation shall, within ten (10) working days from the date the administrative citation is issued, make a written request for a hearing with the City Clerk setting forth the basis of the challenge.
- C. Notification of Hearing. .... At least 10 working days prior to the date of the hearing, the City shall, by registered or certified mail or personal service, give ~~notice to the person requesting the administrative hearing or appeal of the time, date, and location of the hearing.~~ In the event a person seeks to challenge multiple citations, the City, in its sole discretion, may consolidate all such citation challenges into a single hearing.
- D. Hearing Officer.
1. The City Manager shall appoint a person or persons who shall preside at the hearing and hear all facts and testimony presented and deemed appropriate (Hearing Officer).
  2. Any person designated to serve as a Hearing Officer is subject to disqualification for bias, prejudice, interest, or for any other reason for which a judge may be disqualified pursuant to Code of Civil Procedure Section 170.1. The offender may challenge the Hearing Officer's impartiality by filing a statement with the City Manager objecting to the hearing before the Hearing Officer and setting forth the grounds for disqualification. The question of disqualification shall be ~~heard~~ considered and determined in writing by the City Manager within ten (10) days following the date on which the disqualification statement is filed.



E. Administrative Hearing Procedures.

1. The hearing is intended to be informal in nature. Formal rules of the California Evidence Code and discovery shall not apply, except that irrelevant and unduly repetitious evidence may be excluded at the Hearing Officer's discretion.
2. Each party shall have the opportunity to offer testimony and evidence and cross-examine witnesses in support of his or her case.
3. ~~Pursuant to California Penal Code Section 19.6, an offender shall not be entitled to a jury for an infraction charge, nor shall an offender be entitled to have the public defender or other counsel appointed at public expense to represent him or her.~~

F. Administrative Order.

1. Within ten (10) working days of the hearing's conclusion, the Hearing Officer shall provide the offender with its decision in writing (administrative order). The Hearing Officer shall provide the offender with the administrative order by personal service, or by registered or certified mail to the offender's last known address.
2. The administrative order shall contain the Hearing Officer's findings of fact and conclusions and the procedure described in Section 1.20.090 for seeking judicial review.
3. The issuance of a decision in favor of the offender shall constitute a dismissal of the administrative citation. The city shall return any funds the offender paid to the City towards the dismissed administrative citation.
4. If the Hearing Officer renders a decision in favor of the City, the offender must comply with the administrative order or seek judicial review of the administrative order pursuant to Section 1.20.090.
5. Failure to timely and properly appeal shall be deemed a failure to exhaust administrative remedies and a waiver of the right to appeal.

G. Failure to Attend Administrative Hearing.

1. Waiver of Right to Hearing; Fine and Hearing Fee Immediately Due and Payable. The appellant's failure to appear at a hearing shall constitute a waiver of the right to a hearing, a forfeiture of the hearing fee deposit, as well as a waiver of a right to judicial review of the imposition of the administrative fine pursuant to Section 1.20.090. An appellant's failure to appear at the hearing shall be presumed an admission of guilt to the municipal code violation charges as indicated on the administrative citation. The administrative fine applicable to the administrative citation, and additional hearing fees, if any, shall be immediately due and payable unless an extension is granted pursuant to subsection 2 of this Section 1.20.080.
2. Good Cause. Upon a showing of good cause by the appellant, the Hearing Officer may excuse the appellant's failure to appear at the hearing and

reschedule the hearing. Under no circumstances shall the hearing be rescheduled more than one time; provided, however, that if, after the first rescheduled hearing, the appellant pays a deposit in the amount of the administrative fine, or fines, and all applicable hearing fees, the hearing may be rescheduled one additional time. Nothing in this subsection shall be interpreted to mean the appellant is excused from the requirement of paying the administrative fine, hearing fee or fees, or appearing at a hearing.

3. Unless excused for good cause per subparagraph (G)(2) above, an appellant that fails to appear at the hearing, or the rescheduled hearing as proscribed herein, shall be deemed to have failed to exhaust their administrative remedies and a waiver of the right to appeal.

#### H. Continuance of Hearing.

1. Any person requesting an administrative hearing or appeal may request a continuance of his/her hearing date, provided, however, that the person requesting the appeal shall be responsible for hearing officer and City staff, consultant and attorney's expenses, if any, incurred as a result of the continuance.
2. No more than two continuances of an administrative hearing or appeal shall be granted, unless the City approves a further continuance for good cause, which shall be determined in the sole discretion of the City Manager or his designee. Any person who fails to appear at a hearing, as described in Section 1.20.080.G, shall not be entitled to a continuance as provided herein; such person's relief, if any, from failure to appear, unless excused for good cause per subparagraph (G)(2) above, shall be limited to the provisions set forth in Section 1.20.080.G.2.
3. The City Manager, or his designee, shall have the sole discretion to waive the payment of hearing officer and/or staff expenses incurred by the City as the result of a continued administrative hearing or appeal, in the event the continuance is the result of exigent circumstances, including, but not limited to illness or other unforeseen circumstance.

**Section 5. Title 3, Chapter 3.24 Code Amendment.** San Clemente Municipal Code, title 3, Revenue and Finance, chapter 3.24, section 1.16.010, General penalty—Misdemeanors, infractions—Continuing violations—Booking fees, is hereby amended to read as follows (additions shown in underline, deletions shown in ~~strikeout~~):

#### **3.24.270 - Penalty.**

- A. Any person violating the provisions of this chapter by operating or maintaining an STLU without a valid STLU operating license permit is guilty of a misdemeanor.
- B. Any person advertising an STLU for which currently there is not a valid STLU license ~~has issued~~ is guilty of a misdemeanor.

**Section 6, Title 5, Chapter 5.12 Code Amendment.** San Clemente Municipal Code, title 5, Business Licenses and Regulations, chapter 5.12, Adult-Oriented Businesses, section 5.12.100, Violation—Penalty, is hereby repealed in its entirety.

~~5.12.100—Violation—Penalty.~~

- ~~A. Every person, whether acting as an individual owner, employee of the owner, permittee, or operator or employee of the permittee, or whether acting as a mere helper for the owner, permittee employer or operator, or whether acting as a participant or worker in any way, who operates or conducts or who participates in the operation of an unpermitted adult-oriented business, or who violates any provisions of this chapter, including but not limited to any provision of Section 5.12.050 shall be guilty of a misdemeanor and shall be fined not more than one thousand dollars (\$1,000.00) for each offense or imprisoned for not more than six (6) months in the county jail or each offense, or both. Each day the violation continues shall be regarded as a separate offense for which the full penalty may be imposed.~~
- ~~B. Any establishment operated, conducted, or maintained contrary to the provisions of this chapter is unlawful and a public nuisance, and the City Attorney may, in addition to or in lieu of prosecuting a criminal action hereunder, commence an action or actions, proceeding or proceedings, for the abatement, removal, and enjoinder thereof in the manner provided by law, and shall be authorized to take such other steps and to apply to such court or courts as may have jurisdiction to grant such relief as will abate or remove such adult-oriented business and restrain and enjoin any person from operating, conducting or maintaining such an establishment contrary to the provisions of this chapter. If the City elects at the initiation of a public nuisance action under this chapter to seek the recovery of attorney's fees, the prevailing party in any such action shall be entitled to recover all of its reasonable costs and expenses incurred with respect to said action, including without limitation its costs of investigation and discovery, attorney's fees, and expert witness fees.~~

**Section 7, Title 5, Chapter 5.12 Code Amendment.** San Clemente Municipal Code, title 5, Business Licenses and Regulations, chapter 5.12, Adult-Oriented Businesses, section 5.12.110, Severability, is hereby amended to read as follows (additions shown in underline, deletions shown in ~~strikeout~~):

**5.12.110 - Severability.**

Should any section, subsection, clause or provision of ordinance 1239, codified in Sections 5.12.040, 5.12.050 and 5.12.090, for any reason be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of Ordinance 1239, codified in Sections

5.12.040, 5.12.050 and 5.12.090; it being hereby expressly declared that Ordinance 1239, and each section, subsection, sentence, clause and phrase thereof would have been prepared, proposed, approved, adopted and/or ratified irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional including, but not limited to, the locational and operational requirements contained in Section 5.12.050. In the event a court of competent jurisdiction renders a decision invalidating the permit issuance process contained in this chapter, any adult-oriented business which operates in the City shall be deemed to be operating under a de facto permit subject to the requirements contained in Section 5.12.050. The de facto permit shall remain subject to the remaining provisions of this chapter which have not been invalidated including but not limited to Section 5.12.080 (Permits nontransferable—Use specific); and Section 5.12.090 (Enforcement and revocation); ~~and Section 5.12.100 (Violation—Penalty).~~

**Section 8, Title 5, Chapter 5.20 Code Amendment.** San Clemente Municipal Code, title 5, Business Licenses and Regulations, chapter 5.20, Bingo and Remote Caller Bingo, section 5.20.080, Summary suspension of license pending opportunity for hearing—Continuation after suspension—Revocation generally, is hereby amended to read as follows (additions shown in underline, deletions shown in ~~strikeout~~):

**5.20.080 - Summary suspension of license pending opportunity for hearing—Continuation after suspension—Revocation generally.**

- A. Whenever it appears to the Chief of Police Services that the licensee is conducting a bingo game in violation of any of the provisions of this chapter, the Chief of Police Services shall have the authority to summarily suspend the license and order the licensee to immediately cease and desist any further operation of any bingo game.
- ~~B. Any person who continues to conduct a bingo game after any summary suspension thereof under subsection A of this section shall be deemed to be guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine not exceeding five hundred dollars (\$500.00) or by imprisonment in the county jail for a period not exceeding six (6) months, or by both such fine and imprisonment.~~
- B. Reserved.
- C. The order issued under subsection A of this section shall also notify the licensee that it shall have ten (10) days from the date of such order to request a hearing, as provided under Section 1.20.080 of this Code to determine whether such license shall be revoked. Failure to request a hearing under the provisions of Section 1.20.080 within said ten-day period, shall result in a revocation of the license.

- D. Notice shall be provided and the hearing shall be held as provided for under Section 1.20.080 of this Code.
- E. Any organization whose license is revoked under this section shall not thereafter conduct any bingo game in the City and may appeal the decision in the same manner as one would request a hearing under Section 1.20.080 of this Code.

**Section 9. Title 5, Chapter 5.32 Code Amendment.** San Clemente Municipal Code, title 5, Business Licenses and Regulations, chapter 5.32, Oil and Gas Drilling Operations, section 5.32.390, Penalties, is hereby repealed in its entirety:

~~**5.32.390 – Penalties.**~~

~~Every person who drills for or produces hydrocarbon substances in violation of any of the provisions of this chapter shall be guilty of a misdemeanor or punishable by a fine of not to exceed five hundred dollars (\$500.00) or by imprisonment in the county jail for a period of not more than six (6) months, or by both such fine and imprisonment. Each day of violation of any of the provisions of this chapter shall be considered to be a separate offense.~~

**Section 10. Title 5, Chapter 5.40 Code Amendment.** San Clemente Municipal Code, title 5, Business Licenses and Regulations, chapter 5.40, Taxi Administration Program, section 5.40.120, Penalty, is hereby repealed in its entirety:

~~**5.40.120 – Penalty.**~~

- ~~A. It shall be unlawful and a misdemeanor, subject to punishment in accordance with Section 1.01.200 et seq. of this code, for any person to violate any provision of this chapter.~~
- ~~B. The City Attorney, at the request of the City Council, may institute an action in any court of competent jurisdiction to restrain, enjoin or abate the condition(s) found to be in violation of the provisions of this chapter, as provided by law.~~
- ~~C. If the City prevails in any criminal or civil action to prosecute, restrain, enjoin or abate the conditions found to be in violation of this chapter, the City shall be entitled to recover, in addition to fines, damages, injunction or other relief, its reasonable costs and expenses, including without limitation its expert witness fees and reasonable attorney's fees, to the fullest extent allowable under law.~~

**Section 10. Title 5, Chapter 5.52 Code Amendment.** San Clemente Municipal Code, title 5, Business Licenses and Regulations, chapter 5.52, Street Vending Permits, section 5.52.060, Suspension and revocation of street vending permit, is hereby amended to read as follows (additions shown in underline):

**5.52.060 - Suspension and revocation of street vending permit.**

A street vending permit shall be suspended or revoked by the license official or his or her designee if it is determined that the permittee or any person under the permittee's control has violated any of the provisions contained in Sections 5.52.040 through 5.52.050, inclusive. The first violation shall result in a suspension of the street vending permit for a period of one (1) week. Any second violation occurring within two (2) years of the first violation shall result in suspension of the permit for thirty (30) calendar days. Any third violation occurring within two (2) years of the first violation shall result in a revocation of the street vending permit. No person whose street vending permit has been revoked pursuant to this chapter shall be issued a street vending permit for a period of two (2) years from the date revocation becomes final. The penalties set forth in this section are not exclusive remedies and the City may pursue any remedy available under the law.

**Section 11. Title 5, Chapter 5.52 Code Amendment.** San Clemente Municipal Code, title 5, Business Licenses and Regulations, chapter 5.52, Street Vending Permits, section 5.52.080, Penalties—Attorney's fees and costs, is hereby repealed in its entirety:

~~**5.52.080 - Penalties—Attorney's fees and costs.**~~

~~In addition to the sanction imposed under Section 5.52.060, any violation of this chapter shall be deemed a public nuisance and subject to abatement through civil injunction as well as prosecution as a criminal misdemeanor. If the City elects at the initiation of any public nuisance action brought under this chapter to seek the recovery of attorney's fees, the prevailing party in any such action shall be entitled to recover all of its reasonable costs and expenses incurred with respect to said action, including without limitation its costs of investigation and discovery, attorney's fees, and expert witness fees.~~

**Section 12. Title 6, Chapter 6.08 Code Amendment.** San Clemente Municipal Code, title 6, Animals, chapter 6.08, Animal Control Regulations Generally, section 6.08.020, Dogs on public property—Animals in proximity to residences, is hereby amended to read as follows (deletions shown in strikeout):

**6.08.020 - Dogs on public property—Animals in proximity to residences.**

- A. Dogs Within or Upon Public Beaches, Parks, Municipal Pier, Municipal Golf Course, etc., Prohibited. Except as provided below, no owner or person in charge or in control of any dog shall permit or allow such dog to be within or upon the public beaches, public access ways to the beach, parks, municipal pier, or municipal golf

course, and such dogs are prohibited from being within or upon such aforementioned public places.

1. City Parks Where Dogs are Permitted On-Leash: A dog who is on a leash and under the control of the dog's owner or the owner's agent is permitted within specified parks that the City Council may, from time to time, designate by duly passed resolution.
  2. City Parks Where Dogs are Permitted Off-Leash: The City Council may, from time to time, designate by duly passed resolution, one or more off-leash dog parks where dogs may be permitted without a leash, provided the owners or owners' agents comply with all animal related rules and regulations, including posted rules and regulations specifically provided for the use of said off-leash dog park(s).
  3. Effective Date Designated Parks Are Available To Dogs; Regulations: A park designated by the City Council as being available to dogs shall be deemed to be available for use by dogs at such time as the Director of Beaches, Parks and Recreation erects signs in the park noting that the park has been so designated. Any dog using a public park in accordance with this section shall have a collar attached to it that contains a current dog license. ~~The owner or person in charge or in control of any dog using a public park in violation of this section shall be subject to an escalating fine. For specification of the penalties for the violation of this section, see Section 1.16.010.~~
  4. Removal of Park From List of Designated Dog Parks: Notwithstanding any of the above, the City Council may, from time to time, by duly passed resolution, remove any park from its list of parks designated for use by dogs if it determines that such removal is in the best interests of the City.
  5. Dogs on Leashes Allowed on Beach Trail: A dog who is on a leash and under the control of the dog's owner or the owner's agent is permitted on all portions of the Beach Trail and all beach access ways providing access to the Beach Trail, including those portions of the Beach Trail and beach access ways that overlay the beach service road, at all times of the year, except on the Fourth of July and during the time that major City-sponsored special events (e.g., the Ocean Festival) are occurring on the beach and the Director of Beaches, Parks, and Recreation has posted the Beach Trail to prohibit dogs, at which times dogs shall be prohibited in such areas.
- B. Dogs on Leashes Allowed on Municipal Trails. Dogs which are on leashes and under the control of the dog's owner or owner's agent are permitted on municipal trails. For the purposes of this section, the term "municipal trails" shall mean those trails identified in the City of San Clemente General Plan.
- C. Keeping of Certain Animals and Fowl Near Residences. It shall be unlawful for any person in a residential structure to keep or maintain any animal within one hundred (100) feet of any other residential structure occupied by a person other than the animal's owner and/or keeper unless:
1. It is expressly allowed by the Zoning Code;

2. Dogs and cats. With the exception of those persons who have a valid animal rescue permit issued by CASA, any person keeping five (5) or six (6) dogs or cats over four (4) months in age, or any combination thereof, is first required to obtain a private kennel permit pursuant to San Clemente Municipal Code Section 6.20.010. Keeping more than 6 dogs or cats over four (4) months in age, or any combination thereof, on any residential property is prohibited unless otherwise expressly permitted by the City's Zoning Ordinance, current existing private kennel permit as defined in section 6.20.010 A, or a valid animal rescue permit issued by CASA.
- D. Dogs Prohibited. Dogs shall be prohibited on Avenida Del Mar from its intersection with El Camino Real to its intersection with Avenida Seville during the San Clemente Fiesta celebration.
- E. Modification. In the event of special circumstances so warranting, the City Council may by resolution modify the requirements established herein. Modifications by the City Council shall only be made if the City Council determines that such modification will not be contrary to the public health, safety or welfare.

**Section 13, Title 6, Chapter 6.10 Code Amendment.** San Clemente Municipal Code, title 6, Animals, chapter 6.10, Regulation of Barking Dogs, section 6.10.110, Collection of unpaid fines, is hereby amended to read as follows (deletions shown in ~~strikeout~~):

**6.10.110 - Collection of unpaid fines.**

- ~~A.—The City at its discretion may pursue any and all legal and equitable remedies for the collection of unpaid fines and late penalties. Pursuit of one remedy does not preclude the pursuit of any other remedies until the total fines and late penalties owed by a responsible person under this Chapter have been collected.~~
- ~~B.—Failure to timely remit payment of a citation fine and/or late penalty authorized under this Chapter shall result in criminal liability and a warrant may be issued for a responsible person's arrest. Nonpayment of such fine and/or late penalty shall be a misdemeanor pursuant to section 1.16.010, punishable by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment in the County jail for a period of not more than six (6) months or by both such fine and imprisonment. be unlawful.~~

**Section 14, Title 6, Chapter 6.32 Code Amendment.** San Clemente Municipal Code, title 6, Animals, chapter 6.32, Wild or Exotic Animals, section 6.32.090, Fines, is hereby repealed in its entirety:

**6.32.090—Fines.**



~~Every violation of Section 6.32.070 shall be an infraction punishable by a fine of:~~

~~A. Fifty dollars (\$50.00) for the first violation;~~

~~B. One hundred dollars (\$100.00) for the second violation.~~

~~This fine shall immediately be payable to the City of San Clemente, 100 Avenida Presidio, San Clemente.~~

**Section 15, Title 6, Chapter 6.36 Code Amendment.** San Clemente Municipal Code, title 6, Animals, chapter 6.36, Abuse of Animals, section 6.36.090, Protection of canines utilized by Police Department, is hereby amended to read as follows (additions shown in underline, deletions shown in ~~strikeout~~):

**6.36.090 - Protection of canines utilized by Police Department.**

- A. Recital. It is the intent of the City Council to protect canines utilized by the Police Department from interference and harm while such animals are in use in the performance of functions or duties of the Police Department.
- B. Prohibited Conduct. It shall be unlawful for any person to willfully or maliciously tease, taunt, torment, strike, kick, mutilate, disable, or otherwise injure, or kill, or to unwarrantably interfere or meddle with any canine while such animal is being utilized by the City Police Department, or any officer, or employee thereof, in the performance of any function or duty of said department, or of such officer or employee.
- ~~C. Penalties. Any person violating any of the provisions of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined in an amount not exceeding three hundred dollars (\$300.00) or imprisoned in the county jail for a period not exceeding ninety (90) days, or by being both so fined and imprisoned.~~

**Section 16, Title 8, Chapter 8.12 Code Amendment.** San Clemente Municipal Code, title 8, Health and Safety, chapter 8.12, Emergency Services, section 8.12.090, Prohibited acts, is hereby amended to read as follows (additions shown in underline, deletions shown in ~~strikeout~~):

**8.12.090 - Prohibited acts.**

~~It shall be a misdemeanor punishable by a fine of not to exceed five hundred dollars (\$500.00), or by imprisonment for not to exceed six (6) months, or both, for any person during an emergency.~~

It shall be unlawful for any person during an emergency:

- A. To willfully obstruct, hinder or delay any member of the Emergency Services Organization in the enforcement of any lawful rules or regulation issued pursuant to

this chapter, or in the performance of any duty imposed upon him or her by virtue of this chapter;

- B. To do any act forbidden by any lawful rules or regulations issued pursuant to this chapter, if such act is of such a nature as to give or be likely to give assistance to the enemy, to imperil the lives or property of inhabitants of this City or to prevent, hinder or delay the defense or protection thereof;
- C. To wear, carry or display, without authority, any means of identification specified by the emergency services agency of the state.

**Section 17, Title 8, Chapter 8.24 Code Amendment.** San Clemente Municipal Code, title 8, Health and Safety, chapter 8.24, Food Handling Businesses, section 8.24.130, Penalty, is hereby repealed in its entirety:

**~~8.24.130—Penalty. Reserved.~~**

~~Any person violating any of the provisions of this chapter shall be guilty of a misdemeanor.~~

**Section 18, Title 8, Chapter 8.28 Code Amendment.** San Clemente Municipal Code, title 1, Health and Safety, chapter 8.28, Solid Waste Management, section 8.28.040, Containers—Placement for Collection—Restrictions on Storage; Penalty for Violations, is hereby amended to read as follows (additions shown in underline, deletions shown in ~~strikeout~~):

**8.28.040 - Containers—Placement for Collection—Restrictions on Storage;  
Penalty for Violations.**

Customers shall place containers and all bulky items for which a scheduled collection has been arranged adjacent to the curb along the street in front of their premises or, if no curb exists, either adjacent to the main traveled portion of the street fronting their premises or in the alley in the rear of the property. Notwithstanding the above, any customer receiving solid waste handling services at a premises having a rear exit onto an alley which has access to streets at each end thereof, shall place containers and all bulky items for which a scheduled collection has been arranged in such alleys. All containers used by and/or for a customer and all bulky items placed in connection with a scheduled collection shall be grouped together when placed in the appropriate collection location and shall be placed out for collection no earlier than 5:00 p.m. of the day prior to the day fixed for collection. Within 24 hours after collection has been made, all containers and any uncollected solid waste (including bulky items) shall be removed by each customer (or, as to bulky items, the owner, tenant, or occupant of the property) from the place of pick up and placed upon the customers property so containers are substantially hidden from view from any public street or alley. "Substantially hidden" means that each

container or bin must at minimum be placed behind a permanent wall, fence or similar structure that is not less than the height of the bin or container.

At the City's discretion, the first violation of any provision of Sections 8.28.040 and 8.28.020—8.28.052 of this Chapter 8.28 may be addressed by placement (by the City or its agent) of a written warning sticker on the container or bulky item, as applicable, and/or by mailing a written warning notice to the property owner (as identified on the County Assessor's records) informing the customer, property owner, tenant, or occupant, as applicable, of the nature of the violation and of said person's responsibility to ensure that his or her property (and, if applicable, the adjacent public or private street, alley, sidewalk, and right-of-way) is maintained in a manner consistent with this chapter, and of the penalty for failing to do so in the future; provided, however, that the City may elect to prosecute violations of this chapter without first issuing such a warning notice. Every violation of Sections 8.28.040 and 8.28.020-8.28.052 of this Chapter 8.28 shall result in the issuance of a citation to the customer and/or to the property owner, tenant, or occupant, as applicable. ~~The first citable offense shall be punishable by a fine not to exceed one hundred dollars (\$100.00); the second citable offense, if committed within six months of the first offense, shall be punishable by a fine not to exceed two hundred dollars (\$200.00); and all additional offenses committed within six months of any previous offense shall be punishable by a fine not to exceed five hundred dollars (\$500.00).~~

**Section 19, Title 8, Chapter 8.28 Code Amendment.** San Clemente Municipal Code, title 8, Health and Safety, chapter 8.28, Solid Waste Management, section 8.28.130, Violations as Infraction, is hereby repealed in its entirety:

~~**8.28.130 - Violations as Infraction.**~~

~~Notwithstanding, and not as a means of limiting, any other remedies available to the City and/or the franchise hauler pursuant to this chapter, any violation of this chapter shall be deemed to be an infraction and is punishable as such according to provisions of this code and state law.~~

**Section 20, Title 8, Chapter 8.54 Code Amendment.** San Clemente Municipal Code, title 8, Health and Safety, chapter 8.54, Fugitive Dust Control for Commercial Operations, section 8.54.050, Compliance, is hereby amended to read as follows (additions shown in underline, deletions shown in ~~strikeout~~):

**8.54.050 - Compliance.**

~~A. A condition in violation of this chapter shall constitute a public nuisance for purposes of this Code.~~

~~B. An operator violating any section of this chapter is guilty of a misdemeanor.~~

C. ~~In addition to any other remedy provided by law, the City is authorized to initiate one or more of the following actions against an operator for a violation of any provision of this chapter:-~~

- ~~1. Criminal proceedings;-~~
- ~~2. Civil proceedings to obtain an injunction or any other relief against the owner or operator to stop operations at the site;-~~
- ~~3. Refusal In addition to any legal remedies available to the City for violation of this Chapter, the City also may refuse to issue or renew future permits, licenses and/or other approvals, and/or release of securities held until the owner or operator has adequately demonstrated compliance with the notice of violation and paid all outstanding fines and fees owed to the city;-~~
- ~~4. Correction of the condition by the City through the use of the abatement provisions set forth elsewhere in this code; and-~~
- ~~5. Any enforcement method authorized by Chapter 1.20 of this Code.-~~

**Section 21. Title 8, Chapter 8.56 Code Amendment.** San Clemente Municipal Code, title 8, Health and Safety, chapter 8.56, Private Alarm Systems, section 8.56.360, Penalties, is hereby is hereby repealed in its entirety:

**~~8.56.360 -- Penalties.-~~**

~~Any person violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine of not more than five hundred dollars (\$500.00), or by imprisonment for a period of not to exceed six (6) months, or both such fine and imprisonment.-~~

**Section 22. Title 8, Chapter 8.66 Code Amendment.** San Clemente Municipal Code, title 8, Health and Safety, chapter 8.66, Litter Receptacles, section 8.66.080, Penalties for violation—Enforcement, is hereby is hereby repealed in its entirety:

**~~8.66.080 -- Penalties for violation — Enforcement.-~~**

~~A. Violations of this chapter may result in fines, penalties and/or a requirement to install and maintain litter receptacles.-~~

~~B. Failure to comply with the provisions of this chapter may result in one (1) or more of the following:-~~

- ~~1. Notices of non-compliance may be issued with a specified period for correction.-~~
- ~~2. Administrative citations may be issued and shall be punishable as follows: for a first offense by a fine of one hundred dollars (\$100.00); for a second offense within the same calendar year by a fine of two hundred dollars (\$200.00); and for each additional offense within the same calendar year by a fine not less than five hundred dollars (\$500.00).-~~

- ~~3. All fines, penalties and/or notices of a requirement of this chapter shall be issued in writing.~~
  - ~~4. All fines imposed under this chapter shall immediately be payable to the City of San Clemente, 100 Avenida Presidio, San Clemente, California.~~
  - ~~5. Appeals of fines, penalties or requirements imposed under this chapter shall be made as follows:~~
    - ~~a. Appeals of fines, penalties, shall be submitted in writing, within ten (10) days to the City Clerk, after the bar establishment has been notified of the penalties and/or corrective actions. A Hearings Officer will hear the appeal. The decision of a Hearings Officer shall be in writing.~~
    - ~~b. The decision of the Hearings Officer can be appealed to the City Council by submitting a written request to the City Clerk within fifteen (15) days of the issuance of the Hearings Officer's decision, and payment of the appropriate fee, as set by resolution of the City Council.~~
- ~~C. Each business day that any person operating or owning a bar is in violation of this chapter shall constitute a new and separate offense and shall be subject to the full penalties contained herein for each such violation.~~

**Section 23, Title 8, Chapter 8.69 Code Amendment.** San Clemente Municipal Code, title 8, Health and Safety, chapter 8.69, Waste Management Plan for Certain Construction, Demolition, and Renovation Projects, section 8.69.080, Return of C&D Performance Security Deposit, is hereby amended to read as follows (additions shown in underline, deletions shown in ~~strikeout~~):

**8.69.080 - Return of C&D Performance Security Deposit.**

- A. Within 60 days after the completion of any covered project, the applicant shall submit to the Waste Management Plan Compliance Official documentation that it has met the diversion requirement for the project. This documentation shall include all of the following:
  1. Receipts from the vendor or facility which collected or received each material, showing the actual weight or volume of that material;
  2. For those projects for which completion and submission of a Waste Management Plan is required by this chapter, a copy of the previously approved Waste Management Plan for the project adding the actual volume or weight of each material diverted and landfilled; and
  3. Any additional information the applicant believes is relevant to determining its efforts to comply in good faith with this chapter.

- B. Applicants shall make reasonable efforts to ensure that all C&D debris diverted or landfilled are measured and recorded using the most accurate method of measurement available. To the extent practicable, all C&D debris shall be weighed by measurement on scales. Such scales shall be in compliance with all regulatory requirements for accuracy and maintenance. For C&D debris for which weighing is not practicable due to small size or other considerations, a volumetric measurement shall be used. For conversion of volumetric measurements to weight, the applicant shall use the materials conversion worksheet approved by the City for this purpose.
- C. The Waste Management Plan Compliance Official shall review the information submitted under subsection A of this section and determine whether the applicant has complied with the diversion requirement, as follows:
1. If the Waste Management Plan Compliance Official determines that the applicant has fully complied with the diversion requirement applicable to the project, he or she shall cause the full C&D performance security deposit to be released to the applicant.
  2. If the Waste Management Plan Compliance Official determines that the applicant has not met the required diversion requirement or if the applicant fails to submit the documentation required by subsection A of this section within the required time period, then the C&D performance security deposit shall be forfeited to the City. ~~Further administrative penalties as defined in Section 8.69.110 shall also be applied.~~ All forfeited C&D performance security deposits and penalties shall be used for the purposes of promoting C&D recycling within the City.
  3. If the applicant fails to submit the documentation required by Section 8.69.080.A within 60 calendar days after the completion of any covered project then the deposit is forfeited to the City.

**Section 24, Title 8, Chapter 8.69 Code Amendment.** San Clemente Municipal Code, title 8, Health and Safety, chapter 8.69, Waste Management Plan for Certain Construction, Demolition, and Renovation Projects, section 8.69.110, Violations, is hereby repealed in its entirety:

**~~8.69.110 – Violations.~~**

- A. ~~Violation of any provision of this chapter may be enforced by civil action including an action for injunctive relief. In any civil enforcement action, administrative or judicial, the City shall be entitled to recover its attorneys' fees and costs from a person who is determined by a court of competent jurisdiction to have violated this chapter.~~
- B. ~~Violation of any provision of this chapter shall constitute an administrative citation punishable by a fine as outlined in Section 1.20 of the City of San Clemente Municipal Code. Where the violation is the failure to achieve the diversion requirement applicable to the project and the C&D materials from the project have already been landfilled, the violation shall be deemed to have ceased after a period~~

~~of 10 days. The City shall recover costs and attorneys' fees incurred in connection with enforcement of this article.~~

**Section 25, Title 9, Chapter 9.04 Code Amendment.** San Clemente Municipal Code, title 9, Public Peace, Morals and Welfare, chapter 9.04, Offenses Against Public Peace and Decency, section 9.04.010, Disorderly Conduct, is hereby amended to read as follows (additions shown in underline, deletions shown in ~~strikeout~~):

**9.04.010 - Disorderly Conduct.**

- A. For the purposes of this section, the following words and phrases shall have the meanings respectively ascribed to them in this subsection:

"Drive-in restaurant" or "drive-in stands" means any restaurant or any place where food or beverages or other refreshments are sold to the public, and so designed as to accommodate the automobiles or other vehicles operated or occupied by patrons or customers of such restaurant receiving service in such automobile or vehicle.

"Drive-in theatre" means any land enclosed by a fence, containing a stage or screen designed primarily for the presentation of moving pictures, shows, dramatic or musical performances and designed to accommodate automobiles or other vehicles operated, used or occupied by the patrons of such theatre during the presentation of such show or performance.

"Hotel" shall include motel, motel-hotel and motor court.

"Residence" means a dwelling designed for occupancy by not more than two families, whether in one or separate dwelling units.

"Trailer court" or "trailer park" means any area or tract of land where space is rented or held out for rent and intended for occupancy by two or more coaches or trailer houses.

- B. No person shall do any of the following:

1. Congregate with two or more other persons on any public street or in any public place, or in any place open to the patronage of the public, when the purpose of so congregating is interfere with the lawful discharge or pursuit of any lawful business or occupation by any other person, or to maliciously interfere with any occupant, licensee, guest or invitee lawfully on such place;
2. Become part of or remain in a group of three or more persons in any public place or any place open to the patronage of the public, when any member of such group is engaged in the commission of a felony or a misdemeanor; or when any member of such group is about to engage in the commission of a felony or a misdemeanor, and after disobedience to a request to disperse has been made to such persons by a law enforcement officer or by the owner or person in charge of such premises;

3. Incite or encourage by words or conduct disobedience to any lawful order or request of any law enforcement officer pursuant to and in the performance of his or her duties;
4. ~~Wander, idle or loiter in, upon or around any professional, business, financial or commercial buildings or industrial establishments;~~
5. ~~Wander, idle or loiter on any parking lot, or on the grounds of any drive in theater, drive in restaurant, trailer court or trailer park, whether in an automobile or not;~~
- 6.4. Park contrary to and in violation of posted instructions any automobile or other vehicle, whether attended or not, upon any private parking lot intended for the employees, customers, clients or patrons of any professional, business, commercial or industrial establishments when such parking lot is posted at the entrance thereof in a conspicuous manner conveying the information to the public that such parking lot is reserved for such employees, customers, clients and patrons of such professional, business, commercial or industrial establishment;
75. Enter the premises, including the grounds, of any private residence for the purpose of participating in any festivity, party, social function, social affair, dance, ceremony or private gathering of persons, unless such person so entering the premises or grounds was at the time of such entering an invitee or guest of the occupant of such premises; and no person under false pretense of being an invitee or guest shall gain admittance to any such premises or grounds;
86. Sit, lie, recline, kneel or otherwise unreasonably restrict or obstruct the free use of any public sidewalk, walkway, passageway, or any public place, or for any number of persons to congregate in such a manner as to willfully and unnecessarily obstruct or interfere with the free movement and passage of persons or vehicles in any public street or any other public place within the City;
97. Park, leave or cause the parking or leaving of any bicycle, vehicle or other like object or thing on any public sidewalk, walkway or public place so as to obstruct or interfere with the reasonable movement of any person.

**Section 26, Title 9, Chapter 9.04 Code Amendment.** San Clemente Municipal Code, title 9, Public Peace, Morals and Welfare, chapter 9.04, Offenses Against Public Peace and Decency, section 9.04.080, Urination and Defecation in Public Places, is hereby amended to read as follows (additions shown in underline, deletions shown in ~~strikeout~~):

**9.04.080 - Urination and Defecation in Public Places.**



- A. No person shall urinate or evacuate his/her bowels on private property in an area exposed to public view or on any public street, sidewalk, alley, park, beach or other public place or property, except in a public restroom.
- B. ~~Any person violating this section is guilty of an infraction and subject to a fifty dollar (\$50.00) fine.~~

**Section 27, Title 9, Chapter 9.12 Code Amendment.** San Clemente Municipal Code, title 9, Public Peace, Morals and Welfare, chapter 9.12, Curfew, section 9.12.070, Penalty, is hereby amended to read as follows (additions shown in underline, deletions shown in ~~strikeout~~):

**9.12.070 - Penalty.**

It shall be unlawful for any person to violate ~~violating~~ the provisions of this chapter ~~shall be guilty of a misdemeanor~~. Minors shall be dealt with in accordance with juvenile court law and procedure.

**Section 28, Title 9, Chapter 9.24 Code Amendment.** San Clemente Municipal Code, title 9, Public Peace, Morals and Welfare, chapter 9.24, Trespass, section 9.24.040, Exceptions, is hereby amended to read as follows (additions shown in underline, deletions shown in ~~strikeout~~):

**9.24.040 - Exceptions.**

- A. Exceptions. The provisions of Section [9.24.030] shall not apply in any of the following instances:
1. When its application results in or is coupled with an act prohibited by the Unruh Civil Rights Act or any other provision of law relating to prohibited discrimination against any person on account of sex, race, color, religion, creed, ancestry, national origin, disability, medical condition, marital status, or sexual orientation;
  2. When its application results in or is coupled with an act prohibited by Section 365 of the California Penal Code or any other provision of law relating to duties of innkeepers and common carriers;
  3. When its application would result in an interference with or inhibition of peaceful labor picketing or other lawful labor activities;
  4. When its application would result in an interference with or inhibition of activities protected by the California or United States constitutions, including, but not limited to free speech and freedom of assembly rights, if any.
  5. When the person who is upon another's property is there pursuant to the property owner's expressive activity policy.

6. When the person who is upon another's private property or business premises is there under claim or color of legal right and is not loitering or otherwise suspected of violating any law or ordinance. This exception is applicable, but not limited to, the following situations involving disputes wherein the participants have available to them practical and effective civil remedies: marital and post-marital disputes, child custody or visitation disputes, disputes regarding title to or rights in real property, landlord-tenant disputes, disputes between members of the same family or between persons residing upon the property concerned up until the time of the dispute, employer-employee disputes, business-type disputes such as those between partners, debtor-creditor disputes, and instances wherein the person claims rights to be present pursuant to order, decree or process of a court.

**Section 30. Title 9, Chapter 9.24 Code Amendment.** San Clemente Municipal Code, title 9, Public Peace, Morals and Welfare, chapter 9.24, Trespass, section 9.24.080, Violations and Penalties, is hereby repealed in its entirety:

**~~9.24.080 - Violations and Penalties.~~**

~~A violation of this section shall be punishable as a misdemeanor pursuant to Chapter 1.16 of this code; provided, that where the City attorney or other prosecutor determines that such action would be in the interests of justice, the City attorney or other prosecutor may prosecute any such offense as an infraction. In the event a notice to appear is prepared as a misdemeanor pursuant to Section 1.16.010.D of this code, the City attorney or other prosecutor may nonetheless prosecute any such offense as an infraction.~~

**Section 31. Title 10, Chapter 10.52 Code Amendment.** San Clemente Municipal Code, title 10, Vehicles and Traffic, chapter 10.52, Abandoned, Wrecked, Dismantled and Inoperative Vehicles, section 10.52.180, Violation—Abandonment, is hereby amended to read as follows (additions shown in underline, deletions shown in ~~strikeout~~):

**10.52.180 - Violation—Abandonment.**

Any person parking, abandoning, storing, leaving or permitting the abandonment, parking, storing or leaving of any licensed or unlicensed vehicle or any part thereof which is an abandoned, wrecked, dismantled or inoperative condition upon any private property or public property within the City for a period in excess of seventy-two (72) hours shall be guilty of an infraction-unlawful unless the vehicle or any part thereof is stored in the manner described in Section 10.52.030 of this chapter.

**Section 32. Title 10, Chapter 10.52 Code Amendment.** San Clemente Municipal Code, title 10, Vehicles and Traffic, chapter 10.52, Abandoned, Wrecked, Dismantled and Inoperative Vehicles, section 10.52.190, Violation—Failure to remove—

Attorney's fees and costs, is hereby amended to read as follows (additions shown in underline, deletions shown in ~~strikeout~~):

**10.52.190 - Violation—Failure to remove—Attorney's fees and costs.**

It is unlawful and an ~~infraction~~ for any person to maintain, fail, ~~or~~ refuse to remove an abandoned, wrecked, dismantled, or inoperative vehicle or part thereof or refuse to abate such nuisance when ordered to do so in accordance with the abatement provisions of this ~~chapter~~ Code or state law where such law is applicable. ~~Any object or vehicle operated, conducted, or maintained contrary to the provisions of this chapter shall be, and the same is hereby declared to be, unlawful and a public nuisance, and the City Attorney may, in addition to or in lieu of prosecuting a criminal action hereunder, commence an action or actions, proceeding or proceedings, for the abatement, removal, and enjoinder of such violations in the manner provided by law, and shall be authorized to take such other steps and to apply to such court or courts as may have jurisdiction to grant such relief as will abate or remove such violations and restrain and enjoin any person from conducting activities contrary to the provisions of this chapter. If the City elects at the initiation of a public nuisance action brought under this Chapter to recover attorney's fees, the prevailing party in any such action shall be entitled to recover all of its reasonable costs and expenses incurred with respect to said action, including without limitation its costs of investigation and discovery, attorney's fees, and expert witness fees.~~

**Section 33, Title 10, Chapter 10.64 Code Amendment.** San Clemente Municipal Code, title 10, Vehicles and Traffic, chapter 10.64, Skates and Skateboards, section 10.64.050, Designated skate court areas, is hereby amended is hereby repealed in its entirety:

**~~10.64.060 - Violation as infraction.~~**

~~Any violation of this Section 10.64 is deemed to be an infraction and is punishable as such according to the provisions of this code and state law.~~

**Section 34, Title 12, Chapter 12.28 Code Amendment.** San Clemente Municipal Code, title 12, Streets, Sidewalks and Public Places, chapter 12.28, Public Recreation Facilities, section 12.28.020, Municipal Golf Course—Prohibited Acts, is hereby amended to read as follows (additions shown in underline, deletions shown in ~~strikeout~~):

**12.28.020 - Municipal Golf Course—Prohibited Acts.**

- A. No person shall play golf or any other game on the municipal golf course without first having paid the fee required by the resolutions of the City Council fixing fees, and without having registered in the registration book

provided for that purpose in the pro-shop located on the municipal golf course.

- B. No person shall trespass, ~~or go upon or loiter on~~ the municipal golf course for any purpose whatsoever, except with the permission and authorization of the person in charge of the operation and management of the golf course, either during the time such course is open to the public or when it is closed to the public.
- C. No parents of minors under the age of sixteen (16) years shall willfully allow or permit their children to play, go upon, ~~or trespass or loiter on~~ the municipal golf course at any time, except with the permission of the person duly authorized by the City to be in charge of such golf course, and then only when such persons authorized by the City are actually in charge thereof, and not at a time when the golf course is closed.

**Section 35, Title 1, Chapter 13.12 Code Amendment.** San Clemente Municipal Code, title 13, Public Services, chapter 13.12, Water Conservation, section 13.12.090, Nuisances, abatement, injunctive relief, is hereby amended to read as follows (additions shown in underline, deletions shown in ~~strikeout~~):

**13.12.090 - Nuisances, abatement, injunctive relief.**

- A. Any condition in violation of the prohibitions of this chapter shall constitute a threat to the public health, safety, and welfare, and is declared and deemed a public nuisance pursuant to Government Code § 38771.
  - 1. Court Order to Enjoin or Abatement. At the request of the City Manager, or the person designated by the City Manager, the Enforcing Attorney may seek a court order to enjoin and/or abate the nuisance.
  - 2. Notice to Owner and Occupant. Prior to seeking any court order to enjoin or abate a nuisance or threatened nuisance, the City Manager or the person designated by the City Manager shall provide notice of the proposed injunction or abatement to the owner and occupant, if any, of the property where the nuisance or threatened nuisance is occurring.
  - 3. Reimbursement of Costs. All costs incurred by the City in responding to any nuisance, all administrative expenses, and all other expenses recoverable under state law, including reasonable consulting fees, shall be recoverable from the person(s) creating, causing, committing, permitting, or maintaining the nuisance. If the City elects at the initiation of a public nuisance action brought under this chapter to seek the recovery of attorney's fees, the prevailing party in any such action shall be entitled to recover all of its reasonable costs and expenses incurred with respect to said action, including without limitation its costs of investigation and discovery, attorney's fees, and expert witness fees. In no judicial action or administrative or special proceeding shall an award of

attorney's fees to a prevailing party exceed the amount of reasonable attorney's fees incurred by the City in the action or proceeding.

4. Nuisance Lien. All costs shall become a lien against the property from which the nuisance emanated and a personal obligation against the owner thereof in accordance with Government Code § 38773.1 and § 38773.5. The owner of record of the property subject to any lien shall be given notice of the lien prior to recording as required by Government Code § 38773.1.
5. At the direction of the City Manager or the person designated by the City Manager the Enforcing Attorney is authorized to collect nuisance abatement costs or enforce a nuisance lien in an action brought for a money judgment or by delivery to the Orange County Assessor of a special assessment against the property in accordance with the conditions and requirements of Government Code § 38773.5.

**Section 36, Title 13, Chapter 13.30 Code Amendment.** San Clemente Municipal Code, title 13, Public Services, chapter 13.30, Use of Sewer Service Facilities by Food Service Establishments Discharging to the Public Sewer, section 13.30.080, Enforcement, is hereby amended to read as follows (additions shown in underline, deletions shown in ~~strikeout~~):

**13.30.080 - Enforcement.**

- A. Purpose and Scope. The City Council finds that specific enforcement provisions must be adopted in order for the City to comply with the laws, regulations, and rules imposed by federal, state, and local regulatory authorities, and to ensure that the Public Sewers are protected and able to operate free from conditions that cause or contribute to overflows, including but not limited to Fats, Oils, and Grease, dirt, rags, debris, root intrusions, and other obstructions that block or have the potential to block the flow of wastewater into or within the Public Sewer System.
- B. Inspection. Upon the request of an Authorized Inspector made during normal business hours, the Operator(s) of any Food Service Establishment shall allow the Authorized Inspector access to that Food Service Establishment's facilities generating wastewater and all disposal facilities and equipment. The Authorized Inspector shall have the right to inspect the Food Service Establishment's place of business, operations, and records or logs for compliance with the Discharge Permit and this Chapter 13.30. The Authorized Inspector may inspect for noncompliance with BMPs, Grease Control Device conditions, maintenance and disposal records and logs, BMP Training logs, and other Discharge Permit requirements or items related to verification of compliance with this Chapter. No person shall interfere with, delay, or resist entrance to authorized City representatives attempting to inspect any Food Service Establishment or facility discharging to the Public Sewer System. Inspections during off hours (after normal business hours) may be requested by the Authorized Inspector or City representative if an emergency condition is present due to a sewer overflow or suspected sewer overflow coming from the Food Service

Establishment's private sewer system. In order to determine the origin of a condition of noncompliance with this Chapter or the source of a sewer overflow event, the Authorized Inspector or City representative may enter adjoining businesses or properties that share sewer systems.

- C. **Sampling.** From time to time the Utilities Manager may conduct sampling of wastewater discharge to determine compliance with this Chapter 13.30. Any sample taken from a sample point within the Food Service Establishment's facility or sewer system may in the Utilities Manager's or his or her authorized representative's discretion be considered to be representative of the discharge to the Public Sewer. In order to determine the characteristics of wastewater discharge, the Utilities Manager may require sampling or flow monitoring for a facility, and to accomplish sampling may require installation of sampling facilities, sample collection ports, or use of sampling devices.
- D. **Due Process.** To ensure that all interested parties are afforded due process of law and that violations are resolved as soon as possible, the general policy of the City is as follows:
1. The Authorized Inspector, working in cooperation with the Utilities Manager, shall have the authority to make inspections and determine compliance with this Chapter, with a right of appeal to the Utilities Manager pursuant to the procedures set forth in this Chapter. Any appeal of an action of the Authorized Inspector to the Utilities Manager shall be filed in writing with the Utilities Manager no later than ten (10) days after the action of the Authorized Inspector is communicated or delivered to the Operator of the Food Service Establishment or otherwise responsible party.
  2. Persons may request that the City Council review a decision of the Utilities Manager. Such a request may be granted or denied by the City Council. Any appeal of an action of the Utilities Manager to the City Council shall be filed in writing with the City Clerk no later than ten (10) days after the action of the Utilities Manager is communicated or delivered to the Operator of the Food Service Establishment or otherwise responsible party.
  3. City decisions issued in connection with review of an action or an appeal shall be made based on findings supported by substantial evidence, and shall be made in writing to the affected party or parties.
  4. The City, at its discretion, may utilize any one or combination of enforcement remedies identified in this Chapter or the Municipal Code in response to noncompliance with any Discharge Permit or any provision of this Chapter. The issuance or exercise of any type of enforcement action in accordance with this Chapter is not a prerequisite for any other or additional enforcement action.
  5. Provided that they timely exhaust all available administrative remedies provided herein, all persons subject to this Chapter 13.30 have a right of appeal of any final City decision taken pursuant to this Chapter 13.30. The City shall provide notice to affected parties concurrent with the City's notice of final

decision that Section 1094.6 of the Code of Civil Procedure governs the time within which judicial review must be sought.

E. Notice of Noncompliance.

1. In the event that noncompliance with the provisions of a Discharge Permit or this Ordinance occurs, the Authorized Inspector or the Utilities Manager may issue a Notice of Noncompliance. The Operator of the Food Service Establishment or otherwise responsible party shall comply with all directives, conditions, and requirements contained within the Notice of Noncompliance within the time so prescribed. The Operator and/or other responsible party may be directed by a Notice of Noncompliance to cease and desist from activities or actions that are prohibited by this Chapter, including without limitation any Discharge Permit. Except in situations involving an immediate threat to the public health or safety, as determined by the Authorized Inspector or Utilities Manager in his or her discretion, each Notice of Noncompliance shall provide a reasonable time period for the Operator or other responsible party to come into compliance.
2. The Operator of the Food Service Establishment or otherwise responsible party shall promptly pay all noncompliance charges reflecting the City's actual costs for any additional inspection, follow-up, notice preparation, monitoring, and any other costs associated with the Notice of Noncompliance, which charges shall be in addition to and not in lieu of any penalties assessed under this Chapter or Chapter 13.24.
3. The Operator of the Food Service Establishment or otherwise responsible party may be assessed an administrative fine in the amount of \$600 per day applicable to each day of continuing noncompliance beyond the time period for corrective action as set forth in the Notice of Noncompliance.
4. The Operator of the Food Service Establishment or otherwise responsible party receiving a Notice of Noncompliance may appeal the issuance of the Notice of Noncompliance to the Utilities Manager and the City Council within the times and in the manner set forth in Section 13.30.080.D.

F. Compliance Schedule Order.

1. In the event that noncompliance with the provisions of a Discharge Permit or this Chapter 13.30 has occurred or is continuing, the Utilities Manager may require that the Operator of the Food Service Establishment or otherwise responsible party enter into a Compliance Schedule Order. The Compliance Schedule Order may state terms and conditions to allow the Operator or otherwise responsible party to come into compliance with a Discharge Permit or other provisions of this Chapter.
2. The Utilities Manager shall not enter into a Compliance Schedule Order until all amounts due and owing to the City under applicable City ordinances, resolutions, and policies have been paid, or until a payment arrangement has been approved by the Utilities Manager.

3. Persons in receipt of a Compliance Schedule Order may appeal the terms thereof to the Utilities Manager and the City Council within the times and in the manner set forth in Section 13.30.080.D.
- G. Discharge Permit Suspension and Revocation.
1. A Discharge Permit may be suspended and/or revoked for any of the following reasons: (a) failure to comply with a Notice of Noncompliance or a Compliance Schedule Order issued to require compliance with a Discharge Permit or other provision of this Chapter; (b) knowingly providing a false Discharge Permit application or making false representations, or submitting false documents, reports, or logs to the Authorized Inspector or the Utilities Manager; (c) refusal to allow inspections during normal business hours or after hours if emergency conditions exist (overflow or suspected overflow) as required by Section 13.30.080.B; (d) interference with an Authorized Inspector during inspection of a Food Service Establishment, sampling of a Food Service Establishment's discharge, or inspection and sampling of an overflow event; or (e) causing or contributing to sewer blockages or sewer overflows within the Public Sewer or failing to address the conditions leading to more than one (1) overflow event from a Food Service Establishment within a twelve (12) month period.
  2. The Utilities Manager shall have the authority to suspend or revoke a Discharge Permit. The Utilities Manager or his/her designee shall cause written notice to be mailed to the Operator of the Food Service Establishment or otherwise responsible party identifying the time and place for a hearing to be conducted by the Utilities Manager (which shall be not less than ten (10) days after the date the notice is personally delivered or deposited in the United States mail, postage prepaid). The notice of hearing shall briefly state the reasons for the proposed suspension or revocation and the Operator shall have the opportunity to attend said hearing to address the action. The Utilities Manager's decision shall be in writing and shall state his or her findings or conclusions and the action to be taken. The Operator of the Food Service Establishment or other party(ies) subject to any order suspending or revoking a Discharge Permit shall have the right to appeal said decision to the City Council within the time and in the manner set forth in Section 13.30.080.D.
- H. Emergency Discontinuance of Service. In the event that a violation of this Chapter 13.30 causes or contributes to a Public Sewer System overflow event or an overflow event emanating from a Sewer Lateral and such event is creating or contributing to an immediate or impending threat to health or safety of persons or the environment, then the Authorized Inspector may discontinue the water service to the Food Service Establishment or to the property, and such service discontinuance shall remain in effect until the Sewer Lateral is repaired or until the matter is heard and water service is ordered continued by the City Utilities Manager or his designee. The following procedures shall apply in the event of emergency water service discontinuance:



1. the Authorized Inspector shall provide personal or telephonic notice as soon as practicable to the Food Service Establishment's emergency contact as stated on the Discharge Permit application for the Food Service Establishment;
  2. in the event the overflow is coming from a property with multiple tenants/occupants, the City shall make reasonable efforts to provide personal or telephonic notice as soon as practicable to the owner or manager of the property as the name of said owner or manager appears in available City records; provided, however, that the City's inability or failure to provide said notice shall not delay or invalidate any other action taken by the City hereunder;
  3. any City notice of service discontinuance shall provide a time within forty-eight (48) hours of the service discontinuance for a hearing on the action before the City Utilities Manager or his or her designee, and the holder of the Discharge Permit or owner or manager of the property shall be notified of the time and location of such hearing and shall have the opportunity to attend said hearing in person or by telephone to address the action. A written decision shall be issued within twenty-four (24) hours after the conclusion of said hearing by the City Utilities Manager or his designee;
  4. the decision of the Utilities Manager or his or her designee to continue the water service interruption shall be subject to a right of further appeal to the City Manager. Any such appeal shall be filed with the City Manager's Secretary or Administrative Assistant within two (2) business days after the decision of the Utilities Manager or designee is delivered to or received by the affected party(ies). In the event of a timely appeal to the City Manager, the Utilities Manager or his/her designee who initially decided the matter shall present the basis for his/her decision to the City Manager within four (4) days of the affected party's appeal, unless an extension of time is agreed to by the appealing party. The holder of the Discharge Permit shall be notified of the time and location of such hearing and shall have the opportunity to attend said hearing in person to address the action. The City Manager shall issue a written decision within two (2) days after conclusion of the hearing. The City Manager's decision shall be final, subject to judicial review in accordance with Section 13.30.090.
- I. Civil Liability, Administrative Civil Penalties, and Criminal Penalties.
1. All persons discharging to the Public Sewer System are subject to further enforcement actions of federal, state, and local regulatory agencies. In the event any court or any federal, state, or regional administrative agency imposes any fines or penalties on the City or any lawsuit or administrative proceeding is initiated against the City as a result of actions of the Operator of a Food Service Establishment or other person in violation of a Discharge Permit or this Chapter 13.30, the City shall be entitled to recover from the responsible party all costs and expenses to which it has been subjected.
  2. All persons discharging to the Public Sewer System are subject to administrative and/or judicial enforcement actions initiated by one or more governmental agencies with jurisdiction, including without limitation the City, the California Regional Water Quality Control Board, the United States

Environmental Protection Agency, and/or the County of Orange. The actions of said agencies may be taken pursuant to the authority of federal and/or state law, including but not limited to: the Federal Clean Water Act and the California Porter-Cologne Water Quality Control Act, among others.

3. Pursuant to Government Code Sections 54739 through 54740, any person who violates any provision of this Chapter, any Discharge Permit condition or prohibition, or any Discharge Permit suspension or revocation order shall be liable civilly for a sum not to exceed Twenty-Five Thousand Dollars (\$25,000) per violation for each day the violation exists or continues. City shall be entitled to petition the Superior Court to impose and assess such penalty in accordance with applicable statutory authority, provided that if City proceeds under alternative statutory and ordinance authority, the total amount recovered by City shall not exceed the amount permitted under applicable federal, state, and local laws.
4. Pursuant to Government Code Section 54740.5 and 53069.4 City has the authority to issue an administrative complaint to any person in violation of this Chapter, a City issued Discharge Permit, or the terms of any order revoking or suspending a Discharge Permit. As an alternative to any other remedy City may have for any such violation, City shall have the authority to act in accordance with the requirements of this Section 13.30.080.1 and may assess civil penalties and administrative fines as provided in this Section.
  - a. The administrative complaint shall be served by personal delivery or certified mail on the person subject to the complaint and shall inform the person that a hearing will be conducted. The hearing date shall be scheduled within thirty (30) days of the service of the administrative complaint. The administrative complaint shall state the alleged act or failure to act that constitutes a violation of this Chapter, including without limitation a violation of any City issued Discharge Permit or order revoking or suspending any such permit. The administrative complaint shall state the provisions of law authorizing civil liability and the proposed civil penalty.
  - b. The matter shall be heard at the time and location provided in the notice of hearing by the Utilities Manager or his or her designee. In the event that the person in receipt of the administrative complaint waives the right to a hearing, the hearing need not be conducted. At the hearing, the charged party shall have the opportunity to respond to the allegations of the administrative complaint with written and/or oral evidence. The Utilities Manager or his or her designee shall issue a notice of decision. The charged party may appeal the notice of decision to the City Council within the times and in the manner set forth in Section 13.30.080.D.
  - c. If after the hearing, or the appeal (if taken), the Utilities Manager or his or her designee or the City Council finds that the charged party has acted or failed to act in violation of this Chapter, the applicable Discharge Permit, or the applicable revoking or suspending the City issued Discharge Permit, the charged party may be assessed a civil penalty in accordance with the

following: (1) in an amount not to exceed two thousand dollars (\$2,000) for each day said person fails or refuses to furnish required reports, logs, or compliance documentation; (2) in an amount not to exceed three thousand dollars (\$3,000) for each day of failing or refusing to timely comply with any applicable Compliance Schedule Order; (3) in an amount not to exceed five thousand dollars (\$5,000) for each day of violation of a Discharge Permit or issued by the City; and (4) in an amount not to exceed ten dollars (\$10.00) per gallon for any discharge in violation of a suspended or revoked Discharge Permit, cease and desist order, or other order or prohibition issued or reissued by the City.

5. In determining the amount of any civil penalty under this Section 13.30.080.I, the Utilities Manager or his her designee and the City Council, as applicable, may take into consideration all relevant circumstances, including the extent of harm caused by the violation, the nature and persistence of the violation, the length of the violation, the history of any prior violations by the responsible party, whether the violation was intentional or negligent and the degree of foreseeability or fault related to the violation, and the corrective actions, if any, attempted or taken by the responsible party.
6. An order of the Utilities Manager or his or her designee assessing a civil penalty under this Section 13.30.080.I shall be final on the 11th day after it is served on the Operator of the Food Service Establishment or otherwise responsible party unless such person files an appeal with the City Clerk within the time provided in Section 13.30.080.D.
7. An order assessing civil penalties issued by the City Council shall be final upon issuance. Persons in receipt of a final order of the Board may obtain judicial review pursuant to Government Code Section 54740.6 by filing in the court a petition for a writ of mandate in accordance with Sections 13.30.080.D and 13.30.090.
8. No administrative penalty shall be recoverable for any violation for which the City has recovered civil penalties through a judicial proceeding filed pursuant to this Section 13.30.080.I and applicable law.
9. To the maximum extent permitted by law, the amount of any civil penalty issued under this Section 13.30.080.I shall constitute a lien against the real property of the fined party if remaining delinquent and unpaid for 60 days, and the lien may be recorded in accordance with Government Code Section 54740.5(d)(5) or the amount may be reduced to judgment in accordance with Section 54740.5(e).
10. Notwithstanding any other provision set forth herein, if a court of competent jurisdiction determines that any administrative or civil fine or penalty prescribed by this Section 13.30.080.I exceeds the maximum fine or penalty that can be imposed under applicable law, the City Council hereby expresses its intent that this Section be interpreted to provide instead that the fine or penalty shall be the maximum fine or penalty that is legally permissible.

~~41. Any person who violates any provision of this Chapter is guilty of a misdemeanor, which upon conviction shall be punishable by fine of not more than six hundred dollars (\$600.00) or punishment by imprisonment for not more than thirty (30) days, or by both fine and imprisonment.~~

**Section 37. Title 13, Chapter 13.36 Code Amendment.** San Clemente Municipal Code, title 13, Public Services, chapter 13.36, Underground Utility Districts, section 13.36.120, Penalty for violation of chapter, is hereby repealed in its entirety:

~~**13.36.120 -- Penalty for violation of chapter.**~~

~~It shall be unlawful for any person to violate any provision or to fail to comply with any of the requirements of this chapter. Any person violating any provision of this chapter or failing to comply with any of its requirements shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding five hundred dollars (\$500.00) or by imprisonment not exceeding six (6) months, or by both such fine and imprisonment. Each such person shall be deemed guilty of a separate offense for each day during any portion of which any violation of any of the provisions of this chapter is committed, continued or permitted by such person, and shall be punishable therefor as provided for in this chapter.~~

**Section 38. Title 13, Chapter 13.40 Code Amendment.** San Clemente Municipal Code, title 13, General Provisions, chapter 13.40, Stormwater Runoff Control, section 13.40.090, Criminal sanctions, is hereby repealed in its entirety:

~~**13.40.090 -- Criminal sanctions.**~~

- ~~A. Prosecutor. The Enforcing Attorney may act on the request of the City Manager, or the person designated by the City Manager, to pursue enforcement actions in accordance with the provisions of this chapter.~~
- ~~B. Infractions. Any Person who may otherwise be charged with a misdemeanor under this chapter may be charged, at the discretion of the Enforcing Attorney, with an infraction punishable by a fine of not more than one hundred dollars (\$100.00) for a first violation, two hundred dollars (\$200.00) for a second violation, and a fine not exceeding five hundred dollars (\$500.00) for each additional violation occurring within one year.~~
- ~~C. Misdemeanors. Any Person who negligently or knowingly violates any provision of this chapter, undertakes to conceal any violation of this chapter; continues any violation of this chapter after notice thereof; or violates the terms, conditions and requirements of any permit issued pursuant to this ordinance, shall be guilty of a misdemeanor punishable by a fine of not more than one thousand dollars~~

~~(\$1,000.00) or by imprisonment for a period of not more than six (6) months, or both.~~

~~D. Damages. The Enforcing Attorney may petition the Court for any of the following damages:-~~

- ~~1. The recovery of all costs incurred and/or to be incurred in the enforcement of this chapter, including but not limited to costs relating to investigation, sampling, monitoring, inspection, cleanup, administrative expenses, legal fees and costs, and all other expenses as authorized by law, as well as damages to public property and consequential damages;~~
- ~~2. All costs incurred in cleaning up and/or mitigating harm to the environment or public property, or to reduce the threat to human health;~~
- ~~3. Damages for harm to the environment or public property; and;~~
- ~~4. Restitution and injunctive, declaratory and such other equitable relief as may be allowed by law.~~

**Section 39. Title 15, Chapter 15.76 Code Amendment.** San Clemente Municipal Code, title 15, Building and Construction, chapter 15.76, Flood Damage Prevention, section 15.76.080, Compliance, is hereby amended to read as follows (additions shown in underline, deletions shown in ~~strikeout~~):

**15.76.080 - Compliance.**

No structure or land shall hereafter be constructed, located, extended, converted or altered without full compliance with the terms of this chapter and other applicable regulations. Violations of the provisions of this chapter by failure to comply with any of its requirements (including violations of conditions and safeguards established in this chapter in connection with conditions) shall constitute a misdemeanor ~~be unlawful~~. Nothing shall prevent the City Council from taking such lawful action as is necessary to prevent or remedy any violation.

**Section 40. Title 17, Chapter 17.04 Code Amendment.** San Clemente Municipal Code, title 17, Zoning, chapter 17.04, Administration, section 17.04.060, Zoning Ordinance violations, is hereby amended to read as follows (additions shown in underline, deletions shown in ~~strikeout~~):

**17.04.060 - Zoning Ordinance violations.**

~~A.~~—Enforcement by Person Appointed by the City Manager. It shall be the duty of the person appointed by the City Manager to enforce the provisions of this title pertaining to the use of land or buildings and the erection, construction, reconstruction, moving, alteration or addition to any buildings or structures. Any

permit or license of any type issued by any department or officer of the City in conflict with the provisions of this title is declared to be null and void.

- ~~B. Public Nuisance and Enforcement. Any building or structure erected, constructed, altered, enlarged, converted, moved, or maintained contrary to the provisions of this title, and any use of land or buildings used, operated or maintained contrary to the provisions of this title, are declared to be public nuisances. The City Attorney, upon order of the City Council, shall commence the necessary action or proceedings for the abatement, removal and enjoining thereof in the manner prescribed by law in the courts which may have jurisdiction, to grant such relief as will accomplish such abatement and restraint. The remedies provided for in this chapter shall be in addition to any other remedy or remedies or penalties provided in this title or any other law or ordinance.~~
- ~~C. Violation and Penalties. Any person, whether as principal, agent, employee or otherwise, violating or causing the violation of any of the provisions of this title shall be guilty of a misdemeanor, and upon conviction thereof, shall be punishable by a fine of not more than \$1,000.00, or by imprisonment in the City or County jail for six months, or by both such fine and imprisonment. Any violation of this title which is committed and continues from day to day constitutes a separate offense for each and every day during which such violation is committed or continued.~~
- ~~D. Attorney's Fees. If the City elects at the initiation of a public nuisance action brought under this chapter to enforce any provision of this chapter to seek the recovery of attorney's fees, the prevailing party in any such action shall be entitled to recover all of its reasonable costs and expenses incurred with respect to said action, including without limitation its costs of investigation and discovery, attorney's fees, and expert witness fees.~~

**Section 41, Title 17, Chapter 17.16 Code Amendment.** San Clemente Municipal Code, title 17, Zoning, chapter 17.16, Applications, section 17.16.170, Demolition of Historic Properties, is hereby amended to read as follows (additions shown in underline, deletions shown in ~~strikeout~~):

**17.16.170 - Demolition of Historic Properties.**

- A. Purpose and Intent. The purpose of this section is to provide a review procedure for requests to demolish buildings, structures and other resources on the City's Designated Historic Resources List and buildings, structures and other resources on or eligible for listing in the California Register of Historic Resources. For the purposes of this section, the term "demolish" shall mean an act that destroys in whole or in part a designated historic resource.
- B. Authority. The City Council, upon recommendation from the Planning Commission acting as the City's Cultural Heritage Board, shall be responsible for the issuance of a Historic Demolition Permit for any building, structure or other resource located within the City of San Clemente which is: (1) on the City's Designated Historic Resources List; or (2) listed in or eligible for listing in the California Register of

Historic Resources. The issuance of a Historic Demolition Permit is a precondition to obtain from the City's Building Department a demolition permit to demolish any building, structure or other resource located within the City of San Clemente which is: (1) on the City's Designated Historic Resources List; or (2) listed in or eligible for listing in the California Register of Historic Resources.

- C. **Applicability.** This section shall apply to all applications for or resulting in the demolition of any buildings, structures or other resources listed on the City's Designated Historic Resources List or listed or eligible for listing in the California Register of Historic Resources.
- D. **Restriction on Issuance of Demolition Permits.** No permit for the demolition of any structure or other resource listed on the City's Designated Historic Resources List or listed in or eligible for listing in the California Register of Historic Resources shall be issued unless and until the City Council first issues a Historic Demolition Permit pursuant to this section.
- E. **Review Procedures for Demolition Requests.**
  - 1. **Notification of Request.** Whenever an application for a permit is filed with any City department for the demolition of any building, structure or resource on the City's Designated Historic Structures List or listed in or eligible for listing in the California Register of Historic Resources, the application shall be deemed incomplete until such time as the City Council issues the discretionary Historic Demolition Permit (as opposed to the permit to demolish issued by the City Building Official) under this section.
  - 2. **Review Procedure.** Following the receipt of a completed application and completion of the required environmental documentation under the California Environmental Quality Act, a public hearing before the Planning Commission shall be noticed and held pursuant to Section 17.12.100, public hearing and notification, of this title. After completion of the Planning Commission hearing, the Planning Commission shall indicate by resolution whether it recommends that the proposed Historic Demolition Permit be approved, approved with modifications and/or conditions, or denied by the City Council. A public hearing before the City Council will then be noticed and held pursuant to Section 17.12.100. After completion of the public hearing the City Council shall indicate by resolution whether the application for the proposed Historic Demolition Permit is approved, approved with modifications and/or conditions, or denied.
  - 3. **Required Findings.** Prior to any approval of an application for a Historic Demolition Permit, the following finding in subparagraph (a) or alternatively, the findings in subparagraphs (b) and (c) below shall be made:
    - a. Any environmental impact caused by the demolition of the historic building, structure or other resource shall be mitigated to a level of insignificance as those terms are used in the California Environmental Quality Act; or

- b. Based upon substantial evidence, specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make it infeasible to mitigate the environmental impacts of the project to a level of insignificance; and
  - c. Specific overriding economic, legal, social, technological, and other benefits of the demolition and/or of any project proposed to be constructed in place of the historic building, structure or other resource outweighs the significant effects on the environment caused by its demolition.
- F. **Penalty for Demolition of Historic Structures.** It shall be unlawful for any person, whether acting as a principal, agent, employee, or otherwise, who demolishes to demolish any building, structure or other resource covered by this section, shall be guilty of a misdemeanor. In addition, no building permit shall be issued for any new development on the property in question for a period of five years from the date the violation occurs, other than as may be required to comply with applicable health and safety requirements and regulations, and in no event shall any permit authorize the new construction to exceed the building's square footage, lot coverage, and use of the original structure.

**Section 42, Title 17, Chapter 17.28 Code Amendment.** San Clemente Municipal Code, title 17, Zoning, chapter 17.28, Special Uses, section 17.28.035, Marijuana Uses, is hereby amended to read as follows (additions shown in underline, deletions shown in ~~strikeout~~):

**17.28.035 - Marijuana Uses.**

- A. **Purpose and Intent .** The purpose of this section is to regulate personal, medical, and commercial marijuana uses. Nothing in this section shall preempt or make inapplicable any provision of state or federal law.
- B. **Definitions .** For purposes of this section, the following definitions shall apply:
  - 1. "Accessory structure" means an "accessory building," as defined by Section 17.88.030 of this code, that is fully enclosed and secured with a lock.
  - 2. "Commercial marijuana activity" includes the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, labeling, transportation, distribution, delivery or sale of marijuana and marijuana products.
  - 3. "Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, trimming, or processing of marijuana.
  - 4. "Delivery" means the commercial transfer of marijuana or marijuana products to a customer. "Delivery" also includes the use by a retailer of any technology



platform owned and controlled by the retailer, or independently licensed under California law, that enables customers to arrange for or facilitate the commercial transfer by a licensed retailer of marijuana or marijuana products.

5. "Distribution" means the procurement, sale, and transport of marijuana and marijuana products between entities for commercial use purposes.
6. "Licensee" means the holder of any state issued license related to marijuana activities, including but not limited to licenses issued under Division 10 of the Business and Professions Code.
7. "Limited home cultivation" means cultivation of up to six living marijuana plants, and possession of the marijuana produced by those plants, within the private residence of the person cultivating them or within an accessory structure to the person's private residence on the same grounds.
8. "Manufacture" means to compound, blend, extract, infuse, or otherwise make or prepare a marijuana product.
9. "Marijuana" means all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include:
  - a. Industrial hemp, as defined in Section 11018.5 of the California Health and Safety Code; or
  - b. The weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product.
10. "Marijuana accessories" means any equipment, products or materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, smoking, vaporizing, or containing marijuana, or for ingesting, inhaling, or otherwise introducing marijuana or marijuana products into the human body.
11. "Marijuana products" means marijuana that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing marijuana or concentrated cannabis and other ingredients.
12. "Person" includes any individual, firm, co-partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular.

13. "Private residence" means a house, an apartment unit, a mobile home, or other similar dwelling that is a "residential dwelling unit," as defined by the California Building Code (24 Cal. Code Regs. § 202), that is fully enclosed and secured with a lock, and that is the primary residence of the person in possession.
14. "Sale" includes any transaction whereby, for any consideration, title to marijuana is transferred from one person to another, and includes the delivery of marijuana or marijuana products pursuant to an order placed for the purchase of the same and soliciting or receiving an order for the same, but does not include the return of marijuana or marijuana products by a licensee to the licensee from whom such marijuana or marijuana product was purchased.
15. Any term defined in this section also means the very term as defined in the California Business and Professions Code or the California Health and Safety Code, unless otherwise specified.

C. Personal Use .

1. For purposes of this subsection, personal recreational use, possession, purchase, transport, or dissemination of marijuana shall be considered unlawful in all areas of the City to the extent it is unlawful under California law.
2. Outdoor Cultivation. A person may not cultivate marijuana outdoors in any zoning district of the City. "Outdoors" means not in a fully enclosed and secure building structure. It includes covered decks, carports, open-air garden courts, and similar situations that are not fully enclosed and secured with a lock. No use permit, building permit, variance, or any other permit or entitlement, whether administrative or discretionary, shall be approved or issued for any such use or activity.
3. Indoor Cultivation. All indoor cultivation is prohibited except for limited home cultivation, as defined in Subsection B.7. Limited home cultivation is only allowed if each of the requirements of Section 9.04.025 is satisfied.

D. Medical Use .

1. Cultivation of medical marijuana pursuant to Section 11362.77 of the California Health and Safety Code is subject to the cultivation requirements laid out in Subsection C. of this section.
2. The establishment or operation of any medical marijuana collective, cooperative, dispensary, delivery service, operator, establishment, or provider shall be considered a prohibited use in all zoning districts of the City. No use permit, variance, building permit, or any other entitlement or permit, whether administrative or discretionary, shall be approved or issued for the establishment of any collective, cooperative, dispensary, delivery service,

operator, establishment, or provider in any zoning district, and no person shall otherwise establish such businesses or operations in any zoning district.

- E. Commercial Use . The establishment or operation of any business of commercial marijuana activity is prohibited. No use permit, variance, building permit, or any other entitlement or permit, whether administrative or discretionary, shall be approved or issued for the establishment or operation of any such business or operation. Such prohibited businesses or operations may include, but are not limited to:
1. The transportation, delivery, storage, distribution, or sale of marijuana, marijuana products, or marijuana accessories;
  2. The cultivation of marijuana;
  3. The manufacturing or testing of marijuana, marijuana products, or marijuana accessories; or
  4. Any other business licensed by the state or other government entity under Division 10 of the California Business and Professions Code, as it may be amended from time to time.
- F. Penalty for Violation . No person, whether as principal, agent, employee or otherwise, shall violate, cause the violation of, or otherwise fail to comply with any of the requirements of this section. Every act prohibited or ~~declared unlawful~~, and every failure to perform an act made mandatory by this section, shall be a ~~misdemeanor or an infraction, at the discretion of the City Attorney or the District Attorney unlawful~~. In addition to the penalties provided in this section, any condition caused or permitted to exist in violation of any of the provisions of this section is declared a public nuisance and may be abated as provided in Chapter 1.16 and under state law.

**Section 43. Title 17, Chapter 17.28 Code Amendment.** San Clemente Municipal Code, title 17, Zoning, chapter 17.28, Special Uses, section 17.28.050, Amusement Centers, is hereby amended to read as follows (additions shown in underline, deletions shown in ~~strikeout~~):

**17.28.050 - Amusement Centers.**

- A. Purpose and Intent. The noise and ~~loitering~~, litter and other potential nuisances commonly associated with amusement centers tend to decrease their compatibility with adjacent and surrounding uses. In order to mitigate these impacts on other land uses, specific location limitations, development standards, and provisions need to be imposed on amusement centers.
- B. Applicability. This section applies to all structures where mechanical or electrical games are the primary use proposed or when the use of 10 or more mechanical or electrical games is proposed as a secondary use.

C. Review Required. Please refer to the permitted and conditional use tables in Chapters 17.36, Commercial Zones and Standards, through 17.48, Public Zones and Standards, of this title. In no case shall an amusement center be permitted to be closer than 200 feet to the boundary of any RL zone without the approval of a Conditional Use Permit, in accordance with Section 17.16.060, Conditional Use Permits, of this title.

D. Minimum Standards.

1. Adult Supervision. One adult supervisor shall be present at all times during hours of operation. One additional supervisor shall be added for every 30 games. The adult supervisor(s) shall be located so as to be able to readily observe all games and all areas of business.
2. Bicycle Racks. Bicycle storage racks shall be maintained off the public sidewalk to adequately accommodate bicycles utilized by amusement center patrons.
3. Hours of Operation. The hours of operation shall be determined through the Conditional Use Permit process, with 8:00 a.m. being the earliest an amusement center is allowed to open and 10:00 p.m. being the latest a center is allowed to close unless the amusement center is accessory to a use with longer hours.
4. Lighting. The amusement center shall be fully and adequately lighted for easy observation of all areas of the premises.
5. Litter. The premises shall be continuously maintained in a safe, clean and orderly condition.
6. Location. Please refer to the permitted and conditional use tables in Chapters 17.32, Residential Zones and Standards, through 17.48, Public Zones and Standards, of this title.
7. Noise. No amplified music shall be audible on the exterior of the premises.
8. Rest Rooms. On-site rest rooms shall be provided for patrons and employees.
9. Structures. All structures shall be constructed so that internal noise generated shall not be audible above daytime ambient noise levels beyond the property boundaries.
10. Telephones. At least one public telephone shall be provided at each arcade or amusement center.

**Section 44. Title 17, Chapter 17.56 Code Amendment.** San Clemente Municipal Code, title 17, Zoning, chapter 17.56, Overlay Districts and Standards, section 17.56.100, Emergency Shelter Overlay District, subdivision A, Purpose and

Intent, is hereby amended to read as follows (additions shown in underline, deletions shown in ~~strikeout~~):

**17.56.100 – Emergency Shelter Overlay District.**

- A. Purpose and Intent. Purpose and Intent. The purpose of the "SB2" Overlay designation is identify those areas where emergency shelters are allowed by right, subject to development and operation standards. The SB2 Overlay meets the requirements of State law by designating specific areas where emergency shelters, also referred to as "homeless shelters", may be established and operated by right, to meet the shelter needs based on homeless population estimates established by current reliable information and in the City's General Plan Housing Element. The goals for areas with this designation are as follows:
1. To facilitate efforts to address the needs of homeless persons in the City of San Clemente by identifying locations where emergency shelters are allowed by right and by establishing objective development and operation standards for emergency shelters.
  2. To protect public safety, maintain land use compatibility, and preserve property values, neighborhood quality and economic vitality while addressing an identified humanitarian need.
  3. To locate such facilities, to the maximum extent possible, close to public transportation, public and community services, near job centers, away from residential neighborhoods, schools and parks.
  4. To allow small-scale, family-oriented emergency shelters as an accessory use to churches and other religious institutions.
  5. To ensure that emergency shelters are designed in accordance with applicable standards, as allowed under State law, and that they comply with City standards and guidelines applying to all other uses in the zone.
  6. To ensure that emergency shelters are operated in a responsible and community-sensitive manner that prevents and avoids impacts to adjacent neighborhoods and enables residents, businesses and property owners to support, monitor, communicate with shelter operators, and seek City action to protect public health, safety and welfare.
  - ~~7. To minimize illegal use of open space areas within the City of San Clemente for homeless encampments, loitering, littering and other problems associated with homeless camps.~~
  87. To achieve a Housing Element which complies with State law and that fully addresses all housing needs in the community while balancing other important community needs and goals, to protect public safety, neighborhood peace and aesthetics, and economic vitality.

**Section 45, Title 17, Chapter 17.64 Code Amendment.** San Clemente Municipal Code, title 17, Zoning, chapter 17.64, Parking and Access Standards, section 17.64.070, Disabled Accessible Parking Spaces, is hereby amended to read as follows (additions shown in underline, deletions shown in ~~strikeout~~):

**17.64.070 - Disabled Accessible Parking Spaces.**

Disabled accessible parking spaces shall be provided as required by Title 24 of the California State Building Standards Code. Such spaces shall be identified as required below:

- A. By posting a sign depicting profile view of a wheelchair with an occupant in white on a blue background; and
- B. By outlining or painting the stall of space in blue and outlining on the ground in the stall or space in white or suitable contrasting color a profile view depicting a wheelchair with an occupant.

~~It shall be an infraction punishable by the fine contained in Section 1.16.010, General Penalty, Misdemeanors, Infractions Continuing Violations Booking Fees, of this code~~unlawful for any person having control over an off-street parking facility containing spaces or stalls reserved for the physically handicapped to fail to maintain either sign required by Subsection (A) of this section such that the sign(s) cease to clearly and conspicuously provide notice that the stall or space is reserved for physically handicapped persons.

The Americans With Disabilities Act (ADA) also contains parking regulations. For information regarding these standards, please refer to the City's Building Division.

**Section 46, Title 17, Chapter 17.76 Code Amendment.** San Clemente Municipal Code, title 17, Zoning, chapter 17.76, Trip Reduction and Travel Demand Management, section 17.76.040, Development standards, is hereby amended to read as follows (additions shown in underline, deletions shown in ~~strikeout~~):

**17.76.040 - Development standards.**

All applicable developments shall be subject to the facility standards specified in this subsection and shall be required by conditions of approval to include within the development project's Site Development Plan and construct or install the improvements identified in either Option A or Option B below.

- A. Option A Facility Improvements.
  1. Preferential Parking for Carpool Vehicles.
    - a. At least 15 percent of the employee parking spaces shall be reserved and designated for carpool vehicles by marking such spaces "Carpool Only."
    - b. Carpool spaces shall be used only by carpool vehicles in which at least two of the vehicle occupants are either employees or tenants of the proposed

development project, or, employees of different development projects or existing businesses that have entered into a reciprocal preferential carpool parking agreements.

- c. Such carpool spaces shall be located near the building's employee entrance(s) or at other preferential locations within the employee parking areas as approved by the Director of Community Development or his/her designee.
- d. The total number of employee parking spaces shall be calculated as follows:

**Table 17.76.040**

**Employee Parking Spaces**

<b>Type of Use</b>	<b>Percent of Total Parking Devoted to Employee Parking</b>
Commercial	
Regional	30%
Community	30%
Neighborhood	30%
Office-Professional	85%
Industrial	90%
Hotel	20%

**2. Bicycle Parking and Shower Facilities.**

- a. Bicycle parking and locker facilities shall be provided in a secure location for use by employees or tenants who commute to the site by bicycle. The number of facilities/racks to be provided shall be at the rate of at least five racks for every 100 employees or fraction thereof.
- b. A minimum of two shower facilities shall be provided, one each for men and women.

**3. Information on Transportation Alternatives.**

- a. A commuter information area shall be provided that offers employees appropriate information on available transportation alternatives to the single-occupancy vehicle. This area shall be centrally located and accessible to all employees or tenants.
- b. Information in the area shall include, but not be limited to, the following:
  - i. Current maps, routes and schedules for public transit;
  - ii. Ridesharing match lists;

- iii. Available employee incentives; and
  - iv. Ridesharing promotional material supplied by commuter-oriented organizations.
4. Rideshare Vehicle Loading Areas.
- a. The need for, design and location of passenger loading areas to embark and disembark passengers from rideshare vehicles shall be determined by the Director of Community Development or his/her designee.
  - b. Passenger loading areas shall be of a size large enough to accommodate the number of waiting vehicles equivalent to the rate of at least five spaces per every 100 required parking space for the applicable development.
  - c. The passenger loading areas shall be located as close as possible to the building's entrance(s), and should be designed in a manner that does not impede vehicular circulation in the parking area.
5. Vanpool Vehicle Accessibility.
- a. The design of all parking facilities shall incorporate provisions for access and parking of vanpool vehicles.
  - b. Where applicable, vanpool vehicle accessibility shall include a minimum seven feet two inches vertical clearance for those parking spaces and ramps to be used by such vehicles.
  - c. Vanpool parking spaces shall be located near employee entrance(s) and/or other preferential locations as approved by the Director of Community Development or his/her designee.
  - d. The number of accessible vanpool parking spaces shall be at the rate of at least two spaces per every 100 of the total required employee parking spaces as determined in Subsection (A)(1)(d), Option A Facility Improvements, of this section.
6. Bus Stop Improvements.
- a. Bus stop improvements, including bus pullouts, bus pads, and right-of-way for bus shelters shall be required for all applicable development located along high traffic volume streets as determined by the City's Traffic Engineer and along all bus routes.
  - b. All bus stop improvements shall be designed and constructed in conformance with standard traffic engineering principles including, but not limited to, the following:
    - i. The frequency and relative impact of blocked traffic due to stopped buses; and
    - ii. The level of transit ridership at the location.

All such improvements shall be reviewed and approved by the Community Development Director or his or her designee.



B. Option B Facility Improvements.

1. The approval body for the applicable development shall determine the number of reserved carpool and vanpool parking spaces required by the development project. The reserved parking spaces locations shall be as close as is practical to the entrances(s) of the development project.
2. An adequate number of secure and convenient bicycle storage areas shall be provided on site.
3. Bus bays, bus stops and bus shelters shall be provided adjacent to roads and streets traversing or bounding the development project, as required by the City.
4. A transportation information center providing the information contained in Subsection (A)(3), Information on Transportation Alternatives, of this section shall be provided with in each building larger than 25,000 gross square feet.
5. A shower and locker room facility for employees of each sex shall be provided in each building larger than 100,000 gross square feet. For any applicable development containing 100,000 or more total combined gross square feet, but which does not contain any single building of 100,000 or more gross square feet. The approval body for the development project may require a condition on such development to provide shower and locker room facilities for each sex.
6. Sidewalks or other paved pathways following direct and safe routes from the external pedestrian circulation system to each building in the applicable development shall be provided.

C. Property Owner Responsibility. The property owner shall be responsible for complying with the provisions of this chapter, either directly or by delegating such responsibility to an employer or tenant.

D. Enforcement and Penalties. The City shall withhold the issuance of Building Permits, Certificate of Occupancy Permits and/or issue stop work orders for any applicable development project failing to comply with the provision of this section. If any improvements or programs required by this section are either rendered unusable or discontinued, the property owner, employer and/or tenant shall be ~~subject to misdemeanor prosecution~~unlawful.

**Section 47. Title 17, Chapter 17.88 Code Amendment.** San Clemente Municipal Code, title 17, Zoning, chapter 17.88, Definitions, section 17.88.040, Severability, is hereby amended to read as follows (additions shown in underline, deletions shown in ~~strikeout~~):

**17.88.040 - Severability.**

Should any section, subsection, clause, or provision of Ordinance 1239, codified in Section 17.88.030, for any reason be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of Ordinance 1239, codified in Section 17.88.030; it being hereby expressly declared that Ordinance 1239, and each

section, subsection, sentence, clause and phrase thereof would have been prepared, proposed, approved, adopted and/or ratified irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional including, but not limited to, the locational and operational requirements contained in Section 5.12.050. In the event a court of competent jurisdiction renders a decision invalidating the permit issuance process contained in this chapter, any adult-oriented business which operates in the City shall be deemed to be operating under a de facto permit subject to requirements contained in Section 5.12.050. The de facto permit shall remain subject to the remaining provisions of this chapter which have not been invalidated including but not limited to Section 5.12.080 (Permits nontransferable—Use specific); and Section 5.12.090 (Enforcement and revocation); ~~and Section 5.12.100 (Violation—Penalty).~~

**Section 48. Existing Code Provisions.** All existing provisions of the Municipal Code that are repeated herein are repeated only to aid decision-makers and the public in understanding the effect of the proposed changes. Restatement of existing provisions does not constitute a new enactment.

**Section 49. CEQA.** The City Council finds that this ordinance is not subject to the requirements of California Environmental Quality Act ("CEQA") for the following reasons:

- A. This ordinance is not "project" within the meaning of Section 15378 of the State CEQA Guidelines, because it has no potential for resulting in direct or indirect physical change in the environment.
- B. This Ordinance is exempt under Section 15061(b)(3), the general rule exemption, because it can be seen with certainty that there is no possibility that this code amendment will have a significant effect on the environment.

The City Council, therefore, directs that a Notice of Exemption for this ordinance be filed with the County Clerk of the County of Orange in accordance with State CEQA Guidelines.

**Section 50. Publication.** The City Clerk shall certify to the adoption of this ordinance and cause it, or a summary of it, to be published once within fifteen (15) days of adoption in a newspaper of general circulation printed and published within the City of San Clemente, and shall post a certified copy of this ordinance, including the vote for and against the same, in the Office of the City Clerk in accordance with California Government Code Section 36933.

**Section 51. Records.** The documents and materials associated with this Ordinance that constitute the record of proceedings on which the City Council's findings and determinations are based are located at City Hall, 100 Avenida Presidio, San Clemente, CA 92672.

**Section 52. Severability.** If any provision of this Ordinance or its application to any person or circumstance is held invalid, such invalidity has no effect on the other

provisions or applications of the Ordinance that can be given effect without the invalid provision or application, and to this extent, the provisions of this Ordinance are severable. The City Council declares that it would have adopted this Ordinance irrespective of the invalidity of any portion thereof.

APPROVED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_.

ATTEST:

\_\_\_\_\_  
City Clerk of the City of  
San Clemente, California

\_\_\_\_\_  
Mayor of the City of San  
Clemente, California

STATE OF CALIFORNIA        )  
COUNTY OF ORANGE         )  
CITY OF SAN CLEMENTE     )

I, JOANNE BAADE, City Clerk of the City of San Clemente, California, hereby certify that Ordinance No. \_\_\_\_\_ having been regularly introduced at the meeting of \_\_\_\_\_, was again introduced, the reading in full thereof unanimously waived, and duly passed and adopted at a regular meeting of the City Council held on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and said ordinance was adopted by the following vote:

AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of San Clemente, California, this \_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_  
CITY CLERK of the City of  
San Clemente, California

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY